State Infrastructure Council

MEETING PACKET

Friday, April 21, 2006
1:15 pm – 3:15 pm
404 House Office Building

Representative David D. Russell, Chair
Representative Adam Hasner, Vice Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

State Infrastructure Council

Start Date and Time:	Friday, April 21, 2006 01:15 pm
End Date and Time:	Friday, April 21, 2006 03:15 pm
Location:	404 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 959 CS Motor Vehicle Safety Pilot Program by Roberson
HB 1049 CS Driver's Licenses by Traviesa
HB 1115 CS South Florida Regional Transportation Authority by Greenstein
HB 1117 CS Public Records by Greenstein
HB 1315 Department of Transportation by Russell
HB 1321 CS Entertainment Industry Economic Development by Davis, D.
HB 1357 CS Growth Management by Altman
HB 1363 CS Affordable Housing by Davis, M.
HB 7077 CS Transportation by Transportation Committee
HB 7079 Highway Safety and Motor Vehicles by Transportation Committee
HB 7167 CS Growth Management by Growth Management Committee

NOTICE FINALIZED on 04/20/2006 16:06 by DUNAWAY.JOYCE

The Florida House of Representatives

State Infrastructure Council

Allan G. Bense
Speaker

David D. Russell, Jr.
Chair

AGENDA
April 21, 2006
1:15 pm – 3:15 pm
404 House Office Building

I. Opening Remarks, Chair Dave Russell

II. Consideration of the following bills:

- **CS/HB 959 by Rep. Roberson – Motor Vehicle Safety Pilot Program**
- **CS/HB 1049 by Rep. Traviesa – Driver's Licenses**
- **CS/HB 1115 by Rep. Greenstein – South Florida Regional Transportation Authority**
- **CS/HB 1117 by Rep. Greenstein – Public Records**
- **HB 1315 by Rep. Russell – Department of Transportation**
- **CS/HB 1321 by Rep. D. Davis – Entertainment Industry Economic Development**
- **CS/HB 1357 by Rep. Altman – Growth Management**
- **CS/HB 1363 by Rep. M. Davis – Affordable Housing**
- **CS/HB 7077 by Transportation Committee – Transportation**
- **HB 7079 by Transportation Committee – Highway Safety and Motor Vehicles**
- **CS/HB 7167 by Growth Management Committee**

III. Closing Remarks, Chair Russell

IV. Adjourn

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 414-9786

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 959 CS Motor Vehicle Safety
SPONSOR(S): Roberson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1022

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	15 Y, 0 N, w/CS	Pugh	Miller
2) Local Government Council	7 Y, 0 N	DiVagno	Hamby
3) Transportation & Economic Development Appropriations Committee	15 Y, 0 N	McAuliffe	Gordon
4) State Infrastructure Council		Pugh BJP	Havlicak RH
5)			

SUMMARY ANALYSIS

Public and private research on guardrails, cable barriers, clay berms, and other types of structural highway barriers indicates that, if properly placed and maintained, these systems improve the safety of public roads. The Federal Highway Administration, with assistance from the American Association of State Highway and Transportation Officials (AASHTO), other engineering associations, and state transportation agencies, continues to research and modify existing requirements for barrier systems.

The need for well-engineered guardrail and other highway barrier structures varies from state-to-state, as well as by the road's type, speed limit, and surrounding topographical features. One such feature common to Florida roadways is the location of natural water bodies, canals, or drainage ditches adjacent to highways.

National and statewide statistics for traffic fatalities caused by, or related to, the absence or failure of highway barrier systems and involving water are not readily available. However, the Florida Department of Transportation (FDOT) was able to collect specific data on traffic fatalities on the State Highway System involving vehicles submerged in water. In 2004, 28 fatal crashes occurred where the vehicles ran off the road and into an adjacent body of water in which 36 people died, including 20 whose deaths may have been caused by being submerged in water.

HB 959 w/CS requires that guardrails, retention cables, or other types of roadway barriers be installed, as part of a pilot project, along "limited-access facilities" in Miami-Dade County that are adjacent to canals or other water bodies. FDOT considers limited-access facilities to be part of the Florida Intrastate Highway System, which includes interstate highways and the Florida Turnpike. The barrier system must be installed and maintained in compliance with FDOT standards. Barriers for eligible limited-access facilities in existence on July 1, 2006, must be installed on or before December 31, 2009.

HB 959 w/CS takes effect July 1, 2006, and will be repealed on December 31, 2011, unless reenacted by the Legislature.

HB 959 w/CS has an estimated $5.3 million fiscal impact on the State Transportation Trust Fund, according to FDOT, and already is included in the agency's Five-Year Work Program.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

HB 959 w/CS does not implicate any House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Federal Highway Administration research reports dating back to 1987 indicate the value of guardrail and other barrier systems in preventing traffic accidents and fatalities. These barrier systems can take many forms including metal guardrails, thick metal cables, concrete barricades, and earthen berms. To be effective barrier systems must be engineered to address a highway's particular features and the type of traffic that comprises the majority of use. The American Association of State Highway and Transportation Officials (AASHTO) has developed a number of nationally accepted standards for barrier systems for federal and state transportation agencies. These standards are continually being tested and updated.

The Florida Department of Transportation (FDOT) has an active highway-barrier installation program, installing more than 2,645.5 miles of guardrails along state highways and the Florida Turnpike and 552 miles of barrier walls. The Turnpike has committed that by 2007, guardrails will run the Turnpike's entire length, from Wildwood to Homestead. Typically the guardrails or cable systems are installed as part of a construction or maintenance project.

Florida has more highway accidents involving out-of-control vehicles veering off a highway into an adjacent canal, drainage ditch, or natural water body than any other state. National and statewide statistics for traffic fatalities caused by, or related to, the absence or failure of highway barrier systems and involving water are not readily available. However, FDOT was able to compile statistics on 2003 and 2004 traffic accident data involving vehicles running off state roads and into water bodies. FDOT staff verified the data by pulling the written reports and reading the narrative description of the accident. FDOT's review indicated that:

- In 2004, there were 28 fatal crashes on the State Highway System where the vehicles ran off the road and into an adjacent body of water. These crashes resulted in 36 fatalities, of which 20 were possibly caused or influenced by the vehicle being submerged.
- In 2003, there were 34 crashes where the vehicles ran off the road and into an adjacent body of water. These crashes resulted in 49 fatalities, 28 of which were possibly caused or influenced by the vehicle being submerged.

According to the accident reports, some of these accidents were caused by drunken, medicated, speeding, or careless drivers. The reports also show that in some accidents the vehicle went over, under, or through guardrails or fences before going into the water.

Effect of Proposed Changes

HB 959 w/CS requires, as a pilot project, each limited-access facility in Miami-Dade County that is adjacent to a canal or other water body to have a system of guard rails, barrier cables, or other barrier installed between the highway and the water body. The guardrail or barrier system must be installed and maintained pursuant to FDOT standards, which must be designed to protect against loss of life from out-of-control vehicles running off highways and into water. The standards should take into account such factors as the width, depth, or proximity of the water body to the highway. Limited-access facilities in existence on July 1, 2006, which are adjacent to water bodies, must have a barrier system installed by December 31, 2009, according to the bill.

Section 334.03(13), F.S., defines a "limited access facility" as:

"a street or highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility or for any other reason. Such highways or streets may be facilities from which trucks, buses, and other commercial vehicles are excluded; or they may be facilities open to use by all customary forms of street and highway traffic."

FDOT considers limited-access facilities to be part of the Florida Intrastate Highway System, which includes interstate highways and the Florida Turnpike. With this bill affecting only limited-access facilities, no county or municipal roads in Miami-Dade County would be subject to the pilot project's requirements.

FDOT is directed to adopt rules to implement the provisions of HB 959 w/CS, although it appears to have sufficient existing standards on guardrails and barrier systems based in part on national engineering standards.

HB 959 w/CS provides an effective date of July 1, 2006. The pilot project is repealed December 31, 2011, unless the Legislature reenacts it.

According to FDOT staff, the cost of implementing HB 959 w/CS is an estimated $5.3 million, which already is included in the FY 2006-2011 Five-Year Work Program.

C. SECTION DIRECTORY:

Section 1: Creates pilot project to install guardrail and other barriers on certain limited-access facilities in Miami-Dade County. Specifies requirements that must be met. Specifies deadline for completing installation on certain roads. Provides for future repeal.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   HB 959 w/CS has an estimated $5.3 million fiscal impact on the State Transportation Trust Fund, according to FDOT, and is incorporated in the current Five-Year Work Program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None, according to FDOT.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 959 w/CS does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

FDOT appears to have existing statutory authority to implement any new rules, or revise existing rules, to implement the provisions of HB 959 w/CS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Transportation Committee

At its March 27, 2006, meeting, the Transportation Committee adopted without objection a strike-all amendment from the bill's sponsor that limited the barrier-system requirement to limited-access highways (or certain state highways) adjacent to water bodies located only in Miami-Dade County as a pilot project.

This amendment eliminated the local unfunded mandate issues raised by the bill as originally filed, and reduced its fiscal impact on FDOT from $268 million to $5.3 million – which FDOT representatives said is already budgeted in the work program.

After adopting the main amendment, the committee voted 15-0 to report the bill as favorable with a committee substitute.

CHAMBER ACTION

The Transportation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to a motor vehicle safety pilot program; requiring certain limited access facilities that are adjacent to a canal or other water body to have a system of guardrails, retention cables, or other barriers between the highway and the canal or water body; providing for the Department of Transportation to establish certain standards governing the installation and maintenance of the barriers; requiring that barriers be installed for existing highways by a specified date; providing for future review and repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Barrier required between a highway and a canal or a water body.--

(1) Each limited access facility in Miami-Dade County that is adjacent to a canal or other water body must have a system of guardrails, retention cables, or other barriers between the

highway and the canal or water body which are installed and maintained in conformance with standards established by the Florida Department of Transportation. The standards should consider loss of life by safely preventing out-of-control motor vehicles from entering the canal or water body, as well as the width or depth of the canal or water body or its proximity to the traveled way of the highway.

(2) For a limited access facility in existence on July 1, 2006, the barriers required under this section must be installed on or before December 31, 2009.

(3) This pilot program shall stand repealed December 31, 2011, unless reviewed and saved from repeal through enactment by the Legislature.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1049 CS Driver's Licenses
SPONSOR(S): Traviesa and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1322

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	13 Y, 2 N, w/CS	Thompson	Miller
2) Judiciary Committee	10 Y, 0 N, w/CS	Hogge	Hogge
3) Transportation & Economic Development Appropriations Committee	14 Y, 0 N	McAuliffe	Gordon
4) State Infrastructure Council		Thompson J.T.	Havlicak RN
5)			

SUMMARY ANALYSIS

The bill requires the court to order the Department of Highway Safety and Motor Vehicles (DHSMV) to withhold the issuance of, or suspend or revoke the driver's license of, any person who sells, gives, serves or permits to be served alcoholic beverages to a person under age 21 or to permit a person under 21 to consume alcoholic beverages on the licensed premises. Currently, under the Beverage Law, Chapter 561, F.S., "licensed premises" is defined to mean "not only rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building which are so closely connected therewith as to admit of free passage from drink parlor to other rooms over which the licensee has some dominion or control...." The bill exempts licensees under the Beverage Law, Chapter 561, F.S., and their employees or agents from this additional sanction.

Under the bill, the period in which the driver's license would be withheld, suspended or revoked would be between 3 and 6 months for the first violation and one year for any subsequent violation. The bill would permit the court to order the DHSMV to issue a driver's license restricted to business or employment purposes, if the person otherwise qualifies for a driver's license.

The bill would take effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government— HB 1049 w/CS provides for an additional sanction for any person who sells, gives, serves or permits to be served alcoholic beverages to a person under age 21 or permits a person under 21 to consume alcoholic beverages on the licensed premised. The bill exempts licensees under the Beverage Law, Chapter 561, F.S., and their employees or agents from this additional sanction.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 322, F.S., relates to the administration of driver's licenses by the DHSMV. Section 322.28, F.S., sets forth the provisions related to suspension or revocation of driver's licenses. A driver's license may be suspended or revoked for various traffic safety related reasons, such as for having a certain number of points for speeding violations or for driving under the influence. A license can also be suspended or revoked for numerous reasons that are not directly related to operating a motor vehicle. Examples include: nonpayment of a criminal case financial obligation, s. 322.245, F.S.; noncompliance with paternity proceeding orders, s. 61.13016, F.S.; not meeting school attendance requirements, ss. 322. 091 and 1003.27, F.S.; and passing worthless checks, ss. 322.251 and 832.09, F.S. In addition, a minor's license can be suspended for possession of an alcoholic beverage, ss. 397.251(2)(i) and 562.111(3), F.S.

Section 322.271, F.S., provides that the DHSMV may, in certain circumstances, issue a driver's license restricted to business or employment purposes only to a person who is otherwise qualified for a license and whose license has been suspended or revoked.

Section 562.11(1)(a), F.S., makes it unlawful for any person to sell, give, serve or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume alcoholic beverages on the licensed premises. A person convicted of a violation of this provision is guilty of a criminal misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed $500. Under the Beverage Law, Chapter 561, F.S., "licensed premises" is defined to mean "not only rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building which are so closely connected therewith as to admit of free passage from drink parlor to other rooms over which the licensee has some dominion or control...."[1] Under that same Chapter, "licensee" is defined to mean "a legal or business entity, person, or persons that hold a license issued by the division (i.e., Division of Alcoholic Beverages and Tobacco)."[2]

Proposed Changes

HB 1049 w/CS requires the court to order DHSMV to withhold the issuance of, or suspend or revoke the driver's license of, any person who sells, gives, serves or permits to be served alcoholic beverages to a person under age 21 or to permit a person under 21 to consume alcoholic beverages on the licensed premises. The bill exempts licensees under the Beverage Law, Chapter 561, F.S., and their employees or agents from this additional sanction.

Under the bill, the period in which the driver's license would be withheld, suspended or revoked would be between 3 and 6 months for the first violation and one year for any subsequent violation. The bill

[1] Fla. Stat. 561.01(11) (2005).
[2] Fla. Stat. 561.01(14) (2005).

would permit the court to order the DHSMV to issue a driver's license restricted to business or employment purposes, if the person otherwise qualifies for a driver's license.

C. SECTION DIRECTORY:

Section 1. Amends s. 562.11, F.S., relating to selling, giving, or serving alcoholic beverages to persons under age 21.

Section 2. Creates s. 322.057, F.S., relating to mandatory revocation or suspension of driver's license for certain persons who provide alcohol to persons under 21 years of age.

Section 3. Provides that the bill takes effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the DHSMV, this bill may generate additional revenue as a result of reinstating the driving privileges of persons suspended or revoked pursuant to this bill. However, the number of individuals to be suspended and the amount of revenue to be collected is indeterminate. Additionally, the DHSMV will incur an indeterminate amount of administrative expense in managing the withholding, suspension, and revocation of driver's licenses. DHSMV also believes this bill will require programming modifications to driver license software systems that will be absorbed as part of the normal workload.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 14, 2006, the Transportation Committee amended HB 1049 to make minor grammatical corrections. The committee then voted 13-2 to report the bill favorably with committee substitute.

On March 22, 2006, the Judiciary Committee amended the Transportation Committee CS to clarify that the licensee to which the CS refers is a licensee under the beverage law and not a person having a driver's license. The bill was then reported out favorably as a committee substitute.

CHAMBER ACTION

The Judiciary Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to driver's licenses; amending s. 562.11, F.S.; providing an additional penalty for providing alcoholic beverages to a person who has not attained 21 years of age; creating s. 322.057, F.S.; requiring a court to order the Department of Highway Safety and Motor Vehicles to withhold the issuance of, or suspend or revoke, the driver's license of certain persons who provide alcoholic beverages to a person who has not attained 21 years of age; providing for exceptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section 562.11, Florida Statutes, is amended to read:

562.11 Selling, giving, or serving alcoholic beverages to person under age 21; providing a proper name; misrepresenting or

misstating age or age of another to induce licensee to serve alcoholic beverages to person under 21; penalties.--

(1)(a)1. It is unlawful for any person to sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume such beverages on the licensed premises. A person who violates this subparagraph commits ~~Anyone convicted of violation of the provisions hereof is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

2. In addition to any other penalty imposed for a violation of subparagraph 1., the court shall order the Department of Highway Safety and Motor Vehicles to withhold the issuance of, or suspend or revoke, the driver's license or driving privilege, as provided in s. 322.057, of any person who violates subparagraph 1., other than a licensee under this chapter or an employee or agent of a licensee under this chapter.

Section 2. Section 322.057, Florida Statutes, is created to read:

322.057 Mandatory revocation or suspension of driver's license for certain persons who provide alcohol to persons under 21 years of age.--

(1) Notwithstanding s. 322.28, the court shall order the department to withhold the issuance of, or suspend or revoke, the driver's license of a person 21 years of age or older, other than a licensee under chapter 561 or an employee or agent of a licensee under chapter 561, who is found guilty of a violation

of s. 562.11(1)(a), for not less than 3 months or more than 6 months for a violation and 1 year for any subsequent violation.

(2) The court may direct the department to issue a driver's license restricted to business or employment purposes only, as provided in s. 322.271, to a person who is otherwise qualified for a license.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1115 CS South Florida Regional Transportation Authority
SPONSOR(S): Greenstein
TIED BILLS: HB 1117w/CS **IDEN./SIM. BILLS:** SB 2078

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	15 Y, 0 N, w/CS	Pugh	Miller
2) Local Government Council	7 Y, 0 N	Camechis	Hamby
3) Transportation & Economic Development Appropriations Committee	12 Y, 1 N	McAuliffe BJP	Gordon
4) State Infrastructure Council		Pugh	Havlicak RH
5)			

SUMMARY ANALYSIS

The South Florida Regional Transportation Authority (Authority) was created in 2003 to broaden the scope of the old Tri-County Commuter Rail Authority (Tri-Rail) and to develop regional public-transit planning for Miami-Dade, Broward, and Palm Beach Counties. This bill makes a number of significant changes to the South Florida Regional Transportation Authority Act. Specifically, the bill:

- Provides that the state will not limit or alter the rights vested in the Authority to sell revenue bonds until all the bonds issued by the Authority are paid off and discharged.
- Clarifies the requirement that each of the three counties dedicate and transfer $2.67 million annually to the Authority for capital funding, as well as $4.2 million annually from each county for operating costs, by specifying that the funds must be dedicated prior to October 31 of each fiscal year.
- Deletes the provision allowing the three counties to collect a $2 fee on initial and renewal vehicle registrations within their boundaries upon approval by referendum.
- Specifies that at least $45 million of a state-authorized, local-option, recurring funding source available to Broward, Miami-Dade and Palm Beach counties must be directed to the Authority to fund capital, operating, and maintenance expenses. This funding may only be dedicated to the Authority if all three counties impose the local-option funding source.
- Eliminates the operating and capital funding contributions from the three counties when the proposed $45 million becomes available; however, those local contributions resume if the new funding ceases.
- Extends from December 31, 2009, to December 31, 2015, the date on which the local capital funding for the Authority ceases if no federal matching funds have been received.
- Deletes references to "commuter rail" to reflect the authority's broader transit mission.
- Provides the Authority an additional $7.9 million each year, in total, from Broward, Miami-Dade, and Palm Beach counties to pay operating expenses.

The bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes: The bill eliminates the $2 fee on initial and renewal registrations of vehicles, which has not been implemented, in Broward, Miami-Dade, and Palm Beach Counties.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

In an attempt to ease the disruptions created for commuters while six-laning I-95 in the mid-1980s, the Florida Department of Transportation (FDOT) purchased an 81-mile rail corridor from CSX Transportation, Inc., (CSXT) for $264 million and began building a commuter train system. Under terms of the sale, CSXT continued to operate its freight trains in the corridor; maintain the tracks, buildings, and signaling; and dispatches all trains using the tracks. In 1989, the Legislature passed the Tri-County Commuter Rail Authority Act as Part 1 of Chapter 343, F.S., creating a commuter railroad to serve Miami-Dade, Broward, and Palm Beach counties.

In 2003, the Legislature enacted SB 686[1], which amended ch. 343, F.S., to reconfigure the Tri-Rail Commuter Rail Authority as the South Florida Regional Transportation Authority (the Authority). Supporters of the legislation said that a transportation authority, rather than a commuter rail system, would have a better opportunity to draw down federal matching dollars for public transit projects.

The Authority is empowered to construct, finance, and manage a variety of mass transit options, not just commuter rail, as an integrated system. It has numerous statutory powers and responsibilities, including the power to acquire, sell, and lease property; to exercise the power of eminent domain; to enter into purchasing agreements and other contracts; to enforce collection of system rates, fees, and other charges; and to approve revenue bonds issued on its behalf by the State Division of Bond Finance.

The Authority is governed by a nine-member board comprised of:

- A county commissioner from each of the three counties, selected by his or her peers;
- A citizen selected by each county commission who must live within the county he or she is representing, be a registered voter, and, insofar as practicable, represent civic and business interests of the community.
- One of the FDOT district secretaries who is responsible for one or more of the counties within the Authority's boundaries. That could be either the District 4 secretary (whose region includes Broward and Palm Beach counties) or the District 6 secretary (whose region includes Miami-Dade). At this time, the FDOT District 6 secretary serves on the Authority.
- Two citizens appointed by the governor who live in different counties within the Authority's jurisdiction but not the same county as the FDOT district secretary. They also must be registered voters.

The 2003 legislation also required each of the three counties served by the Authority to dedicate funding of $2.67 million annually, no later than August 1, 2003. The potential sources of this dedicated funding include:

- Local-option fuel taxes;
- Each county's share of the local ninth-cent fuel tax;

[1] ch. 2003-159, L.O.F.

- Proceeds of a $2 annual fee for registration or renewal of registration of each vehicle licensed in this state and registered in one of the three counties, if approved by a county referendum; or
- Other non-federal funds.

In addition, each county must provide annual funding of at least $1.565 million for operations. These local funding requirements are repealed if the Authority does not obtain federal matching funds by December 31, 2009. A fiscal analysis of the 2003 legislation indicated the $2 fee for new and renewal registration would generate an estimated $8 million annually for the Authority; however, the fees have not been imposed.

Meanwhile, the Authority is continuing to improve the existing commuter rail system with its 18 stations. Since 1995, the major project has been the $451-million "Double Track Corridor Improvement Program," which makes improvements to the existing 72-mile route and builds a second mainline track parallel to the existing track. About $334 million of the project cost has been funded by the Federal Highway Administration through direct grants; FDOT paid the rest. All but two miles of the double-tracking has been completed, and the Authority recently added additional trains and introduced new schedules that have trains leaving the stations every 20 minutes during morning and evening rush hours.

Last year, the commuter train system was averaging about 8,000 riders a day, but the near-completion of the double-tracking, plus better on-time reliability and more scheduled runs, has boosted daily ridership averages in 2006 to nearly 10,000, according to this bill's supporters.

The Authority continues to seek a significant dedicated funding source to complete the commuter train system and to implement its long-range transit plans. Dedicated funding is necessary for the Authority to issue revenue bonds in order to obtain federal transit grants that typically require a 50-50 match. Under the state's participation in the federal "New Starts" transit program, a local match of 25 percent is required, while the state provides the 25 percent and the federal government 50 percent.

EFFECT OF PROPOSED CHANGES

The bill makes a number of significant changes to the South Florida Regional Transportation Authority Act in ch. 343, F.S. These changes are briefly described as follows:

- Clarifies that the three counties must dedicate and transfer not less than $2.67million annually to the Authority for capital expenditures prior to October 31 of each fiscal year.
- Raises from $1.565 million annually to $4.2 million annually the amount of money each of the three counties must contribute to the Authority to pay its operating expenses, generating an additional $7.9 million annually for the Authority in operating funds.
- Deletes the $2 fee on initial and renewal vehicle registrations within the three-county area. The fee, which must be approved by voter referendum, has not been approved in any of the counties.
- Specifies that at least $45 million of a state-authorized, local-option, recurring funding source available to Broward, Miami-Dade, and Palm Beach Counties must be directed to the Authority to fund capital, operating, and maintenance expenses. This funding may only be dedicated to the Authority if all three counties impose it. A potential source of funding is the local-option rental-car surcharge which is the subject of other currently filed bills (HB 301 CS and SB 2632).
- Eliminates the operating and capital funding contributions from the three counties when the proposed $45 million becomes available, but those local contributions would resume if the new funding ceases.
- Specifies that the state will not limit or alter the rights vested in the Authority to sell revenue bonds until all the bonds issued by the Authority are paid off and discharged
- Extends by six years, to December 31, 2015, the date on which the local capital funding for the Authority ceases if no federal matching funds have been received. Section 343.58(1) , F.S., which specifies the local capital funding sources, is repealed under that circumstance.

- Deletes obsolete phrases and makes clarifying changes. Key among them is deleting references to "commuter rail," so that the Authority's broader area of responsibility is to plan, develop, operate, and fund a transit system. This reflects the Authority's plans to operate an integrated system of public transportation options.

C. SECTION DIRECTORY:

Section 1: Amends s. 343.54, F.S., to revise obsolete language.

Section 2: Amends s. 343.55, F.S., to provide that that state will not limit or alter this section related to Authority revenue bonds until all the bonds issued under this section are paid off and discharged.

Section 3: Amends s. 343.58, F.S., to modify timing of county contributions to the authority; deletes $2 initial and renewal registration fee for vehicles registered in the three counties; lays groundwork for Authority to receive certain, new local-option funding from the three counties; raises the counties' contributions to the Authority's operating expenses; provides for cessation and resumption of county contributions; extends repeal date to December 31, 2015 for county capital contributions.

Section 4: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

As a state entity, the Authority could receive an additional $7.9 million in operating funds each year because of the proposed increase in the current operating contributions made by the three counties, from $1.565 million annually to $4.2 million. In subsequent years, if HB 301 CS or SB 2632 creating a local-option rental-car surcharge becomes law, and Broward, Miami-Dade, and Palm Beach counties impose it, the Authority could receive at least $45 million a year for all of its expenses. If that occurs, the existing dedicated sources of funding the three counties contribute to the Authority would be repealed.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill increases from $1.565 million annually to $4.2 million annually the amount of money Broward, Miami-Dade, and Palm Beach Counties each must contribute to the Authority to pay its operating expenses. If HB 301 w/CS or SB 2632, which create a state-authorized local-option recurring funding source, becomes law and is implemented by the three counties, the existing dedicated sources of funding the three counties contribute to the Authority is repealed.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the Authority is successful in improving and promoting public transit in the three-county region, motorists and commercial carriers may benefit due to trips being diverted from the highways, and residents who do not drive may have access to more-affordable and dependable transportation.

D. FISCAL COMMENTS:

Section 3 of this bill includes a provision specifying, "At least $45 million of a state authorized, local-option recurring funding source available to Broward, Miami-Dade, and Palm Beach counties shall be directed to the authority to fund its capital, operating, and maintenance expenses. The funding source shall be dedicated to the authority only if Broward, Miami-Dade, and Palm Beach counties each impose the local-option funding source." The bill's supporters say their intent is to tap into revenues from a proposed local-option rental-car surcharge fee that is the subject of different legislation (HB 301 CS and SB 2632). They estimate that the $2-a-day surcharge on most car rentals would generate at least $48 million each year if imposed by the three counties.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill increases the amount of funding Miami-Dade, Broward and Palm Beach Counties must each contribute to the Authority by $2.635 million. The bill needs to include a statement of important state interest and have a two-thirds vote of the membership of each house.

3. Other:

None.

B. RULE-MAKING AUTHORITY:

The Authority is subject to ch. 120, F.S., but none of the provisions in the bill as currently drafted appear to require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its April 4, 2006, meeting, the Transportation Committee adopted without objection one amendment that replaced the original $50 million in annual recurring state funds directed to the Authority with the provision for a minimum $45 million, state-authorized, local-option, recurring funding source for the Authority if imposed by Broward, Miami-Dade, and Palm Beach counties. The committee then voted 15-0 in favor of the bill and reported it as a committee substitute.

CHAMBER ACTION

The Transportation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the South Florida Regional Transportation Authority; amending s. 343.54, F.S.; revising language relating to powers and duties of the authority; deleting the term "commuter rail"; amending s. 343.55, F.S.; providing pledge to bondholders that the state will not alter certain rights vested in the authority that affect the rights of bondholders while bonds are outstanding; amending s. 343.58, F.S.; revising provisions for funding of the authority; requiring counties served by the authority to annually transfer certain funds before a certain date; removing provisions for sources of that funding; removing authorization for a vehicle registration tax; providing for a certain funding source for capital, operating, and maintenance expenses; revising county funding amounts to fund operations; providing for cessation of specified county funding contributions and providing for certain refunding of the contributions under certain circumstances; revising

timeframe for repeal of specified funding provisions under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) of section 343.54, Florida Statutes, is amended to read:

343.54 Powers and duties.--

(1)

(b) It is the express intention of this part that the authority be authorized to plan, develop, own, purchase, lease, or otherwise acquire, demolish, construct, improve, relocate, equip, repair, maintain, operate, and manage a transit system and transit facilities; to establish and determine the policies necessary for the best interest of the operation and promotion of a transit system; and to adopt rules necessary to govern the operation of a transit ~~commuter rail~~ system and transit ~~commuter rail~~ facilities. It is the intent of the Legislature that the South Florida Regional Transportation Authority shall have overall authority to coordinate, develop, and operate a regional transportation system within the area served.

Section 2. Subsection (4) is added to section 343.55, Florida Statutes, to read:

343.55 Issuance of revenue bonds.--

(4) The state pledges to and agrees with any person, firm, corporation, or federal or state agency subscribing to or acquiring the bonds to be issued by the authority for the purposes of the South Florida Regional Transportation Authority

Act that the state will not limit or alter the rights vested in the authority under this section until all bonds at any time issued and secured by revenues remitted to the authority pursuant to s. 343.58, together with the interest thereon, are fully paid and discharged, insofar as the same affects the rights of the holders of bonds issued under this section.

Section 3. Section 343.58, Florida Statutes, is amended to read:

343.58 County funding for the South Florida Regional Transportation Authority.--

(1) Each county served by the South Florida Regional Transportation Authority must dedicate and transfer not less than $2.67 million to the authority annually. The recurring annual $2.67 million must be dedicated by the governing body of each county prior to October 31 of each fiscal year ~~by August 1, 2003~~. ~~Notwithstanding ss. 206.41 and 206.87, such dedicated funding may come from each county's share of the ninth-cent fuel tax, the local option fuel tax, or any other source of local gas taxes or other nonfederal funds available to the counties. In addition, the Legislature authorizes the levy of an annual license tax in the amount of $2 for the registration or renewal of registration of each vehicle taxed under s. 320.08 and registered in the area served by the South Florida Regional Transportation Authority. The annual license tax shall take effect in any county served by the authority upon approval by the residents in a county served by the authority. The annual license tax shall be levied and the Department of Highway Safety~~

~~and Motor Vehicles shall remit the proceeds each month from the tax to the South Florida Regional Transportation Authority.~~

(2) At least $45 million of a state-authorized, local-option recurring funding source available to Broward, Miami-Dade, and Palm Beach Counties shall be directed to the authority to fund its capital, operating, and maintenance expenses. The funding source shall be dedicated to the authority only if Broward, Miami-Dade, and Palm Beach Counties each impose the local-option funding source.

(3) ~~(2)~~ In addition, each county shall continue to annually fund the operations of the South Florida Regional Transportation Authority in an amount not less than $4.2 ~~$1.565~~ million. Revenue raised ~~Such funds~~ pursuant to this subsection shall also be considered a dedicated funding source.

(4) The current funding obligations under subsections (1) and (3) shall cease upon commencement of the collection of funding from the funding source under subsection (2). Should the funding under subsection (2) be discontinued for any reason, the funding obligations under subsections (1) and (3) shall resume when collection from the funding source under subsection (2) ceases. Payment by the counties will be on a pro rata basis the first year following cessation of the funding under subsection (2). The authority shall refund a pro rata share of the payments for the current fiscal year made pursuant to the current funding obligations under subsections (1) and (3) as soon as reasonably practicable after it begins to receive funds under subsection (2).

(5) If, by December 31, 2015 ~~2009~~, the South Florida Regional Transportation Authority has not received federal matching funds based upon the dedication of funds under subsection (1), subsection (1) shall be repealed.

Section 4. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1117 CS Public Records
SPONSOR(S): Greenstein
TIED BILLS: HB 1115 **IDEN./SIM. BILLS:** SB 2076

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	15 Y, 0 N	Pugh	Miller
2) Governmental Operations Committee	6 Y, 0 N, w/CS	Williamson	Williamson
3) State Infrastructure Council		Pugh BJP	Havlicak RN
4)			
5)			

SUMMARY ANALYSIS

In 2003, the South Florida Regional Transportation Authority was created to replace the Tri-County Commuter Rail Authority (Tri-Rail) and to develop regional public-transit planning and infrastructure for Miami-Dade, Broward, and Palm Beach counties. It is a public agency supported by federal, state, and local tax dollars. Among its powers is the ability to acquire, purchase, and lease real property.

HB 1117 w/CS creates a public records exemption for appraisal reports, offers, and counteroffers related to land acquisition by the South Florida Regional Transportation Authority (the authority) until execution of an option contract, or barring that, until 30 days before a purchase or agreement comes before the authority for approval. The bill allows the authority to disclose, at its discretion, appraisal reports to property owners or to third parties that are assisting in land acquisition.

The bill provides for future review and repeal of the exemption, provides a statement of public necessity, and provides a contingent effective date.

The bill could have a minimal fiscal impact on the authority.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- HB 1117 w/CS delays public access to appraisal reports, offers, and counteroffers related to land purchases by the South Florida Regional Transportation Authority.

B. EFFECT OF PROPOSED CHANGES:

South Florida Regional Transportation Authority

In an attempt to ease the disruptions created for commuters while it was six-laning I-95 in the mid-1980s, the Department of Transportation purchased an 81-mile rail corridor from CSXT for $264 million and began building a commuter train system. Under terms of the sale, CSXT continued to operate its freight trains in the corridor; maintained the tracks, buildings, and signaling; and dispatched all trains using the tracks. In 1989, the Legislature made the temporary commuter rail more permanent, passing the Tri-County Commuter Rail Authority Act as Part 1 of Chapter 343, F.S., and creating a commuter railroad to serve Miami-Dade, Broward, and Palm Beach counties.

In 2003, the Legislature passed SB 686, which replaced the "Tri-Rail" authority with the "South Florida Regional Transportation Authority." The new transportation authority is empowered to construct, finance, and manage a variety of mass transit options, not just commuter rail, as an integrated system. It has numerous powers and responsibilities, including the power to acquire, sell, and lease property; to use eminent domain; to enter into purchasing agreements and other contracts; to enforce collection of system rates, fees, and other charges; and to approve revenue bonds issued on its behalf by the State Division of Bond Finance. It has a nine-member board comprised of county commissioners, citizens, and a Florida Department of Transportation district secretary. Currently, it is supported by contributions of local tax revenues from the three member counties, along with federal and state transportation funds to finance its capital projects.

Open Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. Public policy regarding access to government records also is addressed in the Florida Statutes.

Chapter 119, F.S., more completely addresses the issues of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Section 119.15, F.S., the "Open Government Sunset Review Act," sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or

- Protecting trade or business secrets.

Effect of Proposed Changes

The bill creates a public records exemption for appraisal reports, offers, and counteroffers related to the authority's land acquisitions until execution of an option contract, or barring that, until 30 days before a purchase or agreement comes before the authority for approval. The authority may disclose such confidential and exempt[1] information to private property owners or to third parties assisting in the land acquisition.

In the event that the authority terminates negotiations, the appraisals, offers, and counteroffers become immediately available to the public.

The bill provides for future review and repeal of the exemption on October 2, 2011. It also provides a statement of public necessity and a contingent effective date.

C. SECTION DIRECTORY:

Section 1: Creates s. 343.59, F.S., to create a public records exemption for the South Florida Regional Transportation Authority.

Section 2: Provides a public necessity statement.

Section 3: Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   This bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   See "D. FISCAL COMMENTS" below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

[1] There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. *See City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. *See Attorney General Opinion 85-62*, August 1, 1985.

D. FISCAL COMMENTS:

The authority believes withholding immediate disclosure of appraisals, offers, and counteroffers from the public will result in lower acquisition costs for land on which future mass transit projects will be built. These savings could be invested in future land acquisitions to further expand or improve the commuter rail and other public-transit facilities within its service area.

The bill likely could create a fiscal impact on the authority, because staff responsible for complying with public records requests will require training related to the newly created public records exemption. In addition, the authority could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement
Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement
Article I, s. 24(c) of the Florida Constitution, requires a public necessity statement for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 17, 2006, the Governmental Operations Committee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment:

- Removed a general provision from the bill that raised constitutional concerns.
- Conformed the public necessity statement to the exemption.
- Removed unnecessary language.
- Corrected the name of the Open Government Sunset Review Act.

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to public records; creating s. 343.59, F.S.; providing an exemption from public records requirements for certain appraisal reports, offers, and counteroffers relating to land acquisition by the South Florida Regional Transportation Authority; providing that the exemption expires upon execution of a certain contract or at a certain time before a purchase contract or agreement is considered for approval; providing exceptions to the exemption; providing for future legislative review and repeal; providing a finding of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 343.59, Florida Statutes, is created to read:

343.59 Confidentiality of appraisal reports, offers, and counteroffers.--

(1) Appraisal reports, offers, and counteroffers relating to land acquisition by the authority are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the authority's governing board.

(2) The authority may, at its discretion, disclose appraisal reports to private landowners during negotiations for acquisitions using alternatives to fee simple techniques if the authority determines that disclosure of such reports will bring the proposed acquisition to closure. In the event that negotiations are terminated by the authority, the appraisal reports, offers, and counteroffers shall become available pursuant to s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) The authority may share and disclose appraisal reports, appraisal information, offers, and counteroffers when joint acquisition of property is contemplated.

(4) The authority may disclose appraisal information, offers, and counteroffers to a third party who has entered into a contractual agreement with the authority to work with or on the behalf of or to assist the authority in connection with land acquisitions.

(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed

on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that appraisal reports, offers, and counteroffers be kept confidential and exempt from public records requirements when held by the South Florida Regional Transportation Authority. Disclosure would adversely affect the goal of the purchase of lands for the public good using public funds at competitive prices resulting from negotiations between parties. Further, each party is entitled to independently obtain appraisal reports and property value information regarding said property. Disclosure of the appraisal report or property information by the authority could create an unfair disadvantage for the authority during negotiations. Release of appraisal reports, offers, and counteroffers could impair full and fair competition between the negotiating parties. Thus, the public and private harm in disclosing this information significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize and monitor agency action is not diminished by nondisclosure of this information.

Section 3. This act shall take effect on the same date that HB 1115 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1315 Department of Transportation
SPONSOR(S): Russell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	15 Y, 0 N	Pugh	Miller
2) Fiscal Council	18 Y, 0 N	McAuliffe (BJP)	Kelly
3) State Infrastructure Council		Pugh	Havlicak RH
4)			
5)			

SUMMARY ANALYSIS

Section 338.227, F.S., authorizes the Florida Department of Transportation (FDOT) to issue bonds to pay all or a part of Florida Turnpike Enterprise ("Turnpike") projects, which are part of the agency's Five-Year Work Program approved each year by the Legislature. Section 338.2275, F.S., limits to $4.5 billion the total amount of turnpike bonds that may be issued.

The transportation work program is required to be developed within the estimated available resources. However, the Turnpike's long-range project plan through fiscal year 2010-2011 indicates that the estimated total costs will exceed the statutory bond cap by nearly $1 billion.

HB 1315 increases the Turnpike's revenue bond cap from $4.5 billion in bonds issued to $6 billion in bonds outstanding. This change not only gives the Turnpike more immediate bond capacity, but creates a "line of credit" to issue more bonds as the Turnpike pays down its balance.

The bill has no immediate fiscal impact on state government, nor does it raise any apparent constitutional or other legal issues.

HB 1315 takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

HB 1315 does not implicate any House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

A part of FDOT, the Florida Turnpike Enterprise ("Turnpike") is a 450-mile system of limited-access toll highways. The Turnpike's 2006-2010 Work Program is funded largely through revenue bonds, backed by toll revenues. According to FDOT, every $1 in recurring toll revenues from the Turnpike can be leveraged to generate $14 to pay for project costs.

Section 338.227, F.S., authorizes FDOT to issue bonds to pay all or a part of the legislatively approved turnpike projects, and s. 338.2275, F.S., limits the total amount of bonds that may be issued to $4.5 billion. According to FDOT, nearly $2.336 billion in Turnpike bonds have been issued over the years, leaving $2.164 billion within the statutory cap to be authorized. However, the Turnpike's long-range project plan through fiscal year 2010-2011 indicates that the estimated costs of the projects exceed the statutory bond cap by about $950 million.

Section 339.135(3), F.S., requires FDOT to base its Five-Year Work Program on a "complete, balanced financial plan." To comply with the law, the Turnpike will have to either eliminate or scale back proposed projects, adopt a "pay-as-you go" approach to financing future projects, or seek a change in law to raise the bond cap.

The Legislature last raised the Turnpike bond cap in 2003, from $3 billion to $4.5 billion.

Current Turnpike projects include completion of the Western Beltway, Part C; adding 150 lane miles through widening of the Turnpike System at a cost of nearly $1 billion; adding four new interchanges and improving three other interchanges at a cost of $200 million to improve access to the Turnpike System; and converting the Sawgrass Expressway to a fully electronic, open-road tolling facility and adding SunPass Express lanes at other locations.

Projects proposed for the Turnpike's 2007-2011 Work Program, if the bond cap is increased, include nearly $370 million for additional lanes on various sections of the Homestead Extension-Florida Turnpike (HEFT) and $467 million for additional lanes along the Turnpike Mainline and the Veterans Expressway.

Potential future projects under review by Turnpike staff include another phase of the Suncoast Parkway; extensions of the Polk Parkway, State Road 417 in Volusia County, and the Sawgrass Expressway in Broward County to link with I-95; express lanes on the HEFT and the interstates; and the Port of Miami tunnel.

Effect of Proposed Changes

This bill would raise the cap on Turnpike bonds from $4.5 billion to $6 billion, and change the limitation to a maximum amount outstanding, in effect providing for a "line of credit" that the Turnpike can utilize for long-term planning.

FDOT staff has said this cap increase will allow the Turnpike to complete currently planned projects and to continue to build tolled facilities to handle future transportation needs.

C. SECTION DIRECTORY:

Section 1: Amends s. 338.2275, F.S., to change the Turnpike's bond cap to $6 billion of bonds outstanding. Deletes obsolete language.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "D. FISCAL COMMENTS" below.

2. Expenditures:

   See "D. FISCAL COMMENTS" below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

HB 1315 raises the Turnpike's bond cap from an absolute $4.5 billion in bonds to a limit of $6 billion in bonds outstanding. That means as the Turnpike retires bond issues, it can issue more, as long as it doesn't exceed $6 billion owed at any time.

To the extent that additional Turnpike bonds are issued, they will have to be repaid. The Turnpike pledges toll revenues as debt service for the bonds it issues.

Any increase in the Turnpike bond cap will not impact the state of Florida's debt affordability index because Turnpike bonds are revenue bonds, backed by toll collections, and do not pledge the full faith and credit of the state.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   HB 1315 does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenues.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

FDOT and the Turnpike Enterprise have sufficient rulemaking authority to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to the Department of Transportation; amending s. 338.2275, F.S.; deleting obsolete provisions; revising the maximum amount of bonds that are available for turnpike projects; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 338.2275, Florida Statutes, is amended to read:

338.2275 Approved turnpike projects.--

(1) Legislative approval of the department's tentative work program that contains the turnpike project constitutes approval to issue bonds as required by s. 11(f), Art. VII of the State Constitution. No more than $6 billion of bonds may be outstanding to fund approved turnpike projects. ~~Turnpike projects approved to be included in future tentative work programs include, but are not limited to, projects contained in the 2003-2004 tentative work program. A maximum of $4.5 billion of bonds may be issued to fund approved turnpike projects.~~

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1321 CS Entertainment Industry Economic Development
SPONSOR(S): Davis
TIED BILLS: **IDEN./SIM. BILLS:** SB 2110

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Tourism Committee	8 Y, 0 N, w/CS	McDonald	McDonald
2) Finance & Tax Committee	7 Y, 0 N, w/CS	Rice	Diez-Arguelles
3) State Infrastructure Council		McDonald	Havlicak
4)			
5)			

SUMMARY ANALYSIS

The bill changes the Entertainment Industry Financial Incentive Program from a reimbursement of expenditures to a credit that can be applied against corporate income tax and sales and use tax liability.

Productions of filmed entertainment qualified by the Office of Film and Entertainment and certified by the Governor's Office of Tourism, Trade, and Economic Development are eligible for a tax credit on qualified expenditures in the state. The credit is in an amount equal to 15 percent of qualified expenditures and may be applied as a refund of the sales and use tax paid on qualified expenditures and it may be applied as a credit against the corporate income tax.

There are three separate queues eligible to receive an allocation of the credits: the film, television, and episodic queue; the television pilot queue; and the commercial and music video queue. Productions in the first queue must have a minimum of $625,000 in qualified expenditures for the entire run of the project, or $625,000 in qualified expenditures per episode for a high-impact television series. Qualified high-impact television series will be allowed first position in this queue for its first five production seasons in Florida. Productions in the second queue must have $625,000 in expenditures for the pilot episode. Productions in the third queue must have a minimum of $500,000 in total qualified expenditures in a state fiscal year, with a minimum of $75,000 for each production. A single production under a queue may receive no more than $3 million in tax credits. The first queue receives 60 percent of the available tax credits each fiscal year. The second and third queues each receive 20 percent.

There is a total tax credit cap of $25 million per fiscal year. If applications for credit exceed that amount, the excess will be treated as having been applied for on the first day of the next fiscal year in which tax credits remain available. No more than $75 million in tax credits will be allocated over the three year program.

Tax credits received by qualified production companies may be carried forward for up to five years. Sales and use tax credits may not be transferred. The corporate income tax credits may be sold or assigned, in whole or in part. Credits cannot be exchanged for less than 85 percent of their value. The taxpayer may make up to three tax credit transfers which consist of at least ten percent of the total credits awarded. The purchaser cannot sell, assign, or otherwise transfer the tax credit. A qualified production company that is not a corporation can sell or assign credits or distribute credits to its partners or members in proportion to the respective distributive share of their income or loss for the state fiscal year in which the credits were approved.

The entertainment industry tax credits authorized under this bill are repealed July 1, 2009.

The bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – The bill creates a tax credit for productions of filmed entertainment that can be applied toward corporate income and sales and use tax liability.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Entertainment Industry Financial Incentive Program

Section 288.1254, F.S., is the Entertainment Industry Financial Incentive Program. The amount of incentives available for the program is based upon an annual legislative appropriation. The program was enacted in 2003 but did not receive funding until FY 2004-05 when $2.45 million was appropriated. The program received another appropriation of $10 million for FY 2005-06.

The purpose of this program is to encourage the use of Florida as a site for film and video production, to advocate the hiring of Florida residents as staff, cast or crew and to support and encourage the use of other Florida services and equipment companies in the production of filmed entertainment. The program is also to encourage the relocation to and/or expansion of digital-media-effects companies and motion picture, television production and postproduction companies in Florida.

Production Incentive:

A qualified production[1] is eligible to receive up to 15 percent in a cash reimbursement of in-state qualifying expenditures up to a maximum of $2 million provided that the production has a minimum in total qualified expenditures of $850,000 for the entire run of the project. In determining the expenditures, the wages, salaries, or other compensation of the two highest paid employees is excluded. The final reimbursement is determined after receipts and other information has been submitted to the Office of Film and Entertainment (OFE) for review.

By statute, 60 percent of the incentive funding is dedicated to theatrical or direct-to-video motion pictures, made-for-TV movies, commercials, music videos, industrial and education films, promotional videos or films, documentary films, TV specials, and digital-media-effects productions by entertainment industry to be sold or displayed in an electronic medium. The remaining 40 percent is dedicated to TV pilots or TV series to be sold or displayed in an electronic medium.[2]

Funding for the two queues remains separate until February 1 of the fiscal year when the funding and queues are combined.

Digital Media Effects Company:

[1] A "qualified production" is filmed entertainment that makes expenditures in this state for the total or partial production of filmed entertainment. Productions cannot contain obscene content as defined by the United States Supreme Court. A production is not qualified if it is determined that the first day of principal photography in this state occurred on or before the date of submitting an application to OFE or prior to certification by OTTED. Also, note that electronic gaming industry and sporting events are specifically excluded.

[2] Included in the 40percent are drama, reality, comedy, soap opera, telenovela, game show, or miniseries productions.

The statute provides that a digital-media-effects company in the state may be eligible for a payment of not more than five percent of its annual gross revenues of qualified expenditures as defined in s. 288.1254(2)(c), F.S. OFE reviews applications for reimbursement eligibility.

Qualified Relocation Project:

A qualified relocation project is a corporation, limited liability company, partnership, corporate headquarters, or other private entity that is domiciled in another state or country and relocates its operations in this state, is organized under the laws of this or any other state or country, and includes as one of its primary purposes digital-media-effects or motion picture and television production or postproduction.

The project may receive a one-time incentive payment in an amount equal to five percent of its annual gross revenues before taxes for the first 12 months of conducting business in its Florida domicile or $200,000, whichever is less.

The Entertainment Industry Financial Incentive Program

Production Impact:

With no multiplier effect included, the return on investment for the $2.45 million appropriated for the entertainment industry incentive in 2004-05 was 7.5:1 with estimated total in-Florida production expenditures of almost $18.5 million with more than $9.1 million being Florida resident wages. The return on the $10 million for FY 05-06 is estimated to be 7.4:1 with an estimated total in-Florida production expenditure of $73.9 million with Florida resident salaries accounting for more than $36.6 million. In the first year, four productions were certified for funding while 15 productions were certified as of December, 2005 for funding in the second year.

Digital Media Effects Company Impact:

According to the OFE, only two digital media applications have been approved in two years.

Qualified Relocation Project Impact:

According to the OFE, there have been no applications received for company relocations over the two years that funding has been available. As stated earlier, company relocations are often encouraged through other, more lucrative economic development incentives available through the Governor's Office of Tourism, Trade, and Economic Development (OTTED) with recommendation by Enterprise Florida and through local government economic development agencies.

Florida Film and Entertainment Advisory Council (FFEAC)

The FFEAC is a statutorily-created advisory body to OTTED and to OFE. The 17 member council is composed of members appointed by the Governor, President of the Senate, and Speaker of the House of Representatives. One of the duties of FFEAC is to advise and consult on laws governing the entertainment industry.

Based upon a series of public meetings, the following changes were approved for recommendation at the December 9, 2005 meeting. These changes addressed concerns relating to commercial production, television pilots and episodes, minimum expenditure requirements, encouraging independent production, application process, and method of funding of the incentive. The following were recommended:

- Eliminate specific incentives in law relating to qualified relocation projects and digital-media-effects companies because of lack of use.
- Change the current law allowing for two queues to four queues to do the following:

1. Recognize the differences between commercial and music video production and film, television movies, and specials by splitting into two queues, with 58percent of funding for the film queue and 20percent for the commercial and video production;
2. Provide emphasis on TV pilots by changing the current TV pilots or TV series queue to include only TV pilots and shift the series (episodics) to the film queue, with 20percent of funding to be used for TV pilots; and,
3. Create a new queue for an independent film and video distribution bonus to encourage independent, indigenous productions, with 2percent of funding set aside for this purpose.

- Reduce the minimum Florida qualified expenditure requirement from $850,000 to $625,000 for the film, TV Movie, TV series, and TV pilots to conform to what is the current Screen Actors Guild minimum threshold for low-budget films.
- Reduce minimum expenditure to $500,000 and reduce the $2 million reimbursement cap to $500,000 for commercials and music videos and allow production companies to add up qualified expenditures from multiple commercials within fiscal year to reach minimum expenditures. Also allow for cumulative spend over a fiscal year to meet minimum expenditure level.
- Modify the application and reimbursement process, provide for rules, and specify marketing requirements for Florida recognition in productions.
- Retain the current maximum reimbursement of 15percent up to the maximum payout of $2 million.

The FFEAC was reviewing and comparing the current funding of the incentive through appropriation to the use of a transferable tax credit similar to what most of Florida's competitor states use as their incentive. The official recommendation was not provided at the meeting.

Subsequent to the meeting, the FFEAC endorsed the use of a transferable tax credit. The FFEAC also agreed to remove the proposed queue on distribution for independent films because of difficulty in implementing the proposal at this time.

Other States[3]

Some states without a strong film entertainment infrastructure, such as Louisiana, are using incentives to lure business while infrastructure is being brought in from outside until a base can be built in the state. The director of the Louisiana Film Office has compared the state to Canada ten years ago before it had developed its infrastructure.

Louisiana and seven other states have enacted transferable tax credits that are assignable, can be sold, or can be carried forward for a number of years. Depending upon the state, these credits are offered to production companies on investments (LA, GA), payroll (LA, GA, IL, MA), and production costs (LA, AZ, GA, MA, MO, PA, RI). Nine states offer income tax refunds, rebates, or credits on payroll, production costs, or investments. New Mexico and New Jersey offer low interest loans or loan guarantees to encourage film production. Three states, Louisiana, Oklahoma, and South Carolina, offer incentives for investment in facilities, productions, and certain entertainment businesses.

Unlike Florida's incentive that does not require the hiring of a percentage of residents, the production incentives offered by many other states are tied to employment of residents, with some requiring the hiring of a percentage of local crew, or the use of soundstages or other facilities. Some states offer additional incentives related to employment and to the training or mentoring of crew by a production. Often these are used to help build the infrastructure base of a state.

Proposed Changes:

[3] Florida's Entertainment Industry Infrastructure: *Are We Growing the Indigenous Industry as well as Support Production?*, Tourism Committee, Florida House of Representatives, 2006, p 16.

The bill changes the entertainment industry incentive program from a reimbursement of expenditures to a credit against corporate income tax, and sales and use tax liability.

The digital media-effects company and qualified relocation project incentives are removed. The tax incentives pertain only to the production of filmed entertainment.

Definitions are amended to make clarifications and to reflect the change to a tax credit program. The definition of "filmed entertainment" is changed to add "television special" to the list and to change the exclusions from the definition to include only news shows and sporting events. Also, a definition of "high-impact television series" is added to distinguish it from other television series. The high-impact television series is created to run multiple seasons with at least seven episodes per season and qualified expenditures of at least $625,000 per episode. "Production costs" now include wages, salaries, or other compensation paid through payroll services companies. "Qualified expenditures" is modified to include changes made in the definition of "production costs" and to clarify that only production costs incurred in this state are qualified expenditures. The definition is also changed by removing "employees" which is not accurate. A definition of "qualified production company" is added.

The application procedure and application approval process for filmed entertainment have been changed to reflect the change of the program from a reimbursement of expenditures to a tax credit. In addition to technical changes and the shift of language to the section on rules, the following changes are made in the bill relating to application:

- the signed affirmation that information on an application form has been verified and is correct is shifted from OFE to the applicant;
- the time frame for OFE to review the application, determine if the applicant is a qualified production, make recommendation to OTTED regarding the maximum amount of the tax credit award, and notify an applicant that the information provided is not complete has been increased from five days to ten business days; and,
- within ten days after receiving notice from OFE, OTTED shall certify the maximum tax credit award, if any. Certification will be transmitted to the applicant and to the executive director of the Department of Revenue (DOR). The applicant is responsible for forwarding a certified application to DOR.

Productions of filmed entertainment that are qualified by OFE and certified by OTTED are eligible for a tax credit on qualified expenditures in the state, excluding wages, salaries, and other compensation paid to the two highest-paid residents of this state working on the production. Qualified production companies are eligible for a credit in an amount equal to 15 percent of qualified expenditures and may be applied as a refund of sales and use tax paid on qualified expenditures and as a credit against the corporate income tax impose by ch. 220, F.S.

The bill provides that certain qualified productions that start in one state fiscal year and finish in the next state fiscal year have all qualified expenditures from both fiscal years certified for the latter state fiscal year. This provision does not apply to commercials and music videos.

There is a total credit cap of $25 million per state fiscal year. If applications for credit exceed that amount for a fiscal year, the excess will be treated as having been applied for on the first day of the next fiscal year in which tax credits remain available for allocation. The bill provides for limits on the aggregate amount of tax credits that can be allocated and provides that when the total amount of tax credits allocated reaches $75 million, no more credits can be allocated.

Tax credits awarded in a state fiscal year will be made based on the production's principal photography start date for the queue in which it is placed, within the first two weeks after the queue's opening. Other qualified productions entering into a queue after the initial two weeks will be considered on a first come, first served basis.

There are three queues: the film, television, and episodic queue; the television pilot queue; and the commercials and music video queue.

The film, television, and episodic queue. Productions in this queue must have a minimum of $625,000 in total qualified expenditures for the entire run of the project, except for high-impact television series which must have a minimum of $625,000 in qualified expenditures for each episode. A single production in this queue may receive a maximum credit of $2 million, with the exception of a high-impact television series which may receive a maximum credit of $3 million. This queue receives 60 percent of the available tax credits in any fiscal year. Television series, including, but not limited to, high-impact television series, are not allowed tax credits after five production seasons in this state. Qualified high-impact television series will be allowed first position in this queue for their first five production seasons in the state, if an application is received by OFE within the first two weeks after the queue opens. Unless otherwise provided in the section, high-impact television series must file an application for each state fiscal year in which it is eligible to receive the tax credit.

The television pilot queue. Productions in this queue must demonstrate $625,000 in expenditures for the pilot episode or presentation. A single production in this queue may receive a maximum credit of $2 million. This queue receives 20 percent of the available tax credit in any fiscal year.

The commercials and music video queue. This queue requires productions to demonstrate a minimum of $500,000 in combined total qualified expenditures in a state fiscal year, with a minimum of $75,000 in qualified expenditure for each production. A single production in this queue may receive no more than $500,000. This queue receives 20 percent of the available tax credits in any fiscal year.

On March 1 of each year, credits remaining in the first two queues will be merged and placed into a general queue for use for other purposes as determined by OFE. On April 1 of each fiscal year, credits remaining in the third queue will be merged into the general queue.

If a qualified production is not continued subject to a reasonable schedule or if OFE has been notified that a qualified production will no longer be produced, OFE shall withdraw its eligibility and reallocate the funds to the next qualified productions already in the queue that have not received their full tax credit.

OFE is required to develop a process for receiving information on qualified expenditures from certified productions at the conclusion of the production. OFE is to verify data to substantiate the qualified expenditures. OFE reports the verified amount available for the tax credit to OTTED. OTTED then notifies DOR that the qualified production has met all requirements and recommends the final amount of the credit.

Upon application and approval by DOR, a taxpayer may sell, in whole or in part, corporate income tax credits granted under this program. Credits cannot be exchanged for consideration of less than 85 percent of the tax credit to be transferred. Taxpayers are authorized to conduct no more than three transfers of the awarded credits. Each transfer must consist of at least ten percent of the total credits awarded. Tax credits may be sold at any point during ownership. Purchasers of the credit may use it subject to the same limitations as the taxpayer to whom the credit was granted. The purchaser cannot sell or otherwise transfer the tax credit.

A qualified production company that is not a corporation, as defined in s. 220.03(1)(e), F.S., can make an application to DOR to transfer credits or to distribute credits to its partners or members in proportion to the respective distributive share of the partners' or members' income or loss for the year in which the credits were approved.

A company may use the tax credit against the tax liability imposed under ch. 220, F.S., in whole or in part, and against the liability imposed under ch. 212, F.S., as long as the credits are used only once. Unused tax credits may be carried forward for up to five years.

The bill requires OFE to ensure that appropriate marketing materials, when appropriate, are included in filmed entertainment.

The bill requires the development of rules by OTTED and authorizes DOR to adopt rules.

The bill provides that an applicant who submits fraudulent information on an application is liable for reimbursement of reasonable costs and fees associated with the review, processing, investigation, and prosecution of the fraudulent application.

The entertainment industry tax credits authorized under chs. 212, 220, and 288, F.S., are repealed July 1, 2009.

The bill amends s. 220.02, F.S., revising the order in which credits against the corporate income or franchise tax may be applied.

C. SECTION DIRECTORY:

Section 1. Creates s. 212.08(5)(r), F.S.; authorizing a sales and use tax credit; providing requirements, procedures, and limitations; authorizing DOR to adopt rules.
Section 2. Amends s. 213.053, F.S.; authorizing information regarding the Entertainment Industry Financial Incentive Program to be shared between OFE, OTTED, and DOR.
Section 3. Amends s. 220.02(8), F.S.; revising the order in which credits against the corporate income or franchise tax may be applied.
Section 4. Creates s. 220.192, F.S.; authorizing a corporate income tax credit, providing requirements, procedures, and limitations; authorizing a credit transfer; authorizing DOR to adopt rules.
Section 5. Amends s. 288.1254, F.S., revising the Entertainment Industry Financial Incentive Program; authorizing a tax credit; revising definitions; revising application procedures; requiring an annual report; providing criteria and limitations for awards of tax credits; providing stipulations; providing marketing requirements; authorizing OTTED and DOR to adopt rules; providing liability for fraudulent applications; and providing for repeal of the program on July 1, 2009.
Section 6. Providing an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 2006-07	FY 2007-08
General Revenue	($25)m	($25)m
Total	($25)m	($25)m

2. Expenditures:

The Department of Revenue has indicated a need for an additional $286,257 in FY 2006-2007 and $93,571 on a recurring basis thereafter.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The credit is intended to encourage more television series to work in Florida. Since a television series generally runs for a number of years, this bill will bring longer term employment and stability to the state's entertainment industry infrastructure. The bill also provides greater incentive for commercials and music videos which generally are filmed during a time when other segments of filmed entertainment are not as active in the state.

The purpose of the credit is to encourage the state as a site for filming and to develop and sustain the workforce and infrastructure for filmed entertainment. Additional funds from more production as well as a sustained level of production business will help the state to maintain and possibly increase its trained, experienced crew base and other infrastructure. The Florida Agency for Workforce Innovation stated that in 2004 the average salary for crew in Florida was $52,972, excluding health care and retirement benefits.[4]

An increase in filmed entertainment in the state will impact not only the persons directly employed by the production but will impact ancillary businesses such as building supply companies, nurseries, restaurants, and hotels.

D. FISCAL COMMENTS:

The aggregate amount of tax credits allowed under the bill is $25 million in any fiscal year from FY 2006-07 to FY 2008-09. The total aggregate credit allowed over the three years is $75 million. At this time, it is not known how much of the credit will be used in any year.

There could be some impact on OFE if there is an increase in applications for the incentive when it is changed from an appropriation to a tax credit. OFE has not requested any additional resources to implement the legislation.

The FY 2005-06 appropriation of $10 million for the entertainment industry incentive yielded an estimated $73.9 million in in-state production expenditures, hiring 3,775 Florida residents, and having 12,444 hotel room nights. The Florida wages paid were almost $37 million. The return on investment was 7.4:1[5].

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

[4] Florida Agency for Workforce Innovation, Labor Market Statistics, 2001 – 2004.

[5] "Florida's Entertainment Industry Infrastructure: Are We Growing the Indigenous Industry as well as Supporting Production? 2006" Florida House of Representatives Tourism Committee, Appendix F.

2. Other[6]:

In *Cuno v. DaimlerChrysler*,[7] the Sixth Circuit Court of Appeals invalidated an Ohio state corporate franchise tax credit on grounds that it violated the dormant Commerce Clause of the United States Constitution. The Ohio tax credit applied to the purchase of manufacturing machinery and equipment used in the state and was intended to provide an incentive for the location or expansion of business within the state.

At present the case has no precedent value to courts in the Eleventh Circuit, which includes Florida, because it has been decided in the Sixth Circuit. On September 27, 2005, however, the Supreme Court granted petitions for certiorari by the State of Ohio and DaimlerChrysler, challenging the *Cuno* decision. Arguments were heard by the Court on March 1, 2006. The Court should issue a ruling in the summer of 2006. If the Court affirms the *Cuno* decision, it will become the law of the land, and similar tax incentives in Florida will be at risk of being struck down.

As a general rule, a tax credit or exemption will violate the dormant Commerce Clause if it discriminates on its face or if, on the basis of "a sensitive, case-by-case analysis of purposes and effects," the provision "will in its practical operation work discrimination against interstate commerce" by "providing a direct commercial advantage to local business."[8] The high court has defined "discrimination" in this context to mean the "differential treatment of in-state and out-state economic interests that benefits the former and burdens the latter."[9]

Under *Cuno*, the constitutional challenge that a tax incentive faces will turn on whether the taxpayer is subject to the state's taxing power and whether the tax incentive favors in-state as opposed to out-of-state activities. The *Cuno* test may be explained as follows:

1. Is the business subject to Florida's taxing power?
2. Will the business reduce its Florida tax liability by availing itself of the tax incentive for location or expansion of business in Florida and not by locating or expanding business activity out-of-state? or Will its location or expansion of business activity out-of-state result in a comparative tax increase, as to a similarly-situated business expanding in Florida, because it will not be able to avail itself of the in-state tax incentive?

If the answer is questions 1 and 2 are "yes", the tax incentive likely fails the *Cuno* test.[10]

B. RULE-MAKING AUTHORITY:

The bill requires rulemaking by OTTED and authorizes DOR to adopt rules to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 21, 2006, the Tourism Committee adopted a strike-all amendment to HB 1321. Other than technical and clarifying changes, the differences between the original bill and the committee substitute are as follows:

- Provides rulemaking authorization for DOR to implement provisions of the bill related to corporate tax credits and the use of tax credits as a refund of sales and use tax liability.

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[6] Information taken from *An Analysis of Cuno v.DaimlerChrysler And Its Possible Effects on Florida Business Location Tax Incentives*, November 3, 2005, prepared by staff of the Economic Development, Trade and Banking Committee, Florida House of Representatives.

[7] Cuno v. DaimlerChrysler, 386 F.3d 738(6th Cir. 2004)

[8] Id. at 743 (quoting West Lynn Creamery v. Healy, 512 U.S. 186, 201 (1994)).

[9] Id. (quoting Oregon Waste Sys., Inc. v. Dep't of Envtl. Quality, 511 U.S. 93, 99 (1994)).

[10] *An Analysis of Cuno v. DaimlerChrysler And Its Possible Effects on Florida Business Location Tax Incentives*, November 3, 2005, prepared by staff of the Economic Development, Trade and Banking Committee, Florida House of Representatives, p. 7.

- Amends s. 212.08(5), F.S., authorizing the use of certain entertainment industry tax credits as a refund against sales and use tax liability under circumstances; providing the procedures, requirements, and limitations on the use of credits.
- Amends s. 220.02, F.S., revising the order of priority list of applicable credits against certain taxes.
- Provides that the tax credit award is 15percent of qualified expenditures.
- Requires that no tax credits awarded under s. 220.192, F.S., could be sold or assigned until all credits the taxpayer is eligible to use is exhausted.
- Authorizes companies to use tax credit against the corporate tax liability and against liability for sales and use taxes. Broadens the base of companies that may purchase credits or to which credits can be assigned.
- Requires that the sale or assignment of a credit shall not be for less than 85percent of the transferred amount of the credit.
- Provides that the non-corporate distribution of credits includes sale or assignment of credits.
- Requires that once the maximum amount of total credits has been allocated, no more credits can be allocated.
- Provides for maximum of credit allocations allowed in specified fiscal years.
- Provides for a process for verification of tax credit award by OFE.
- Provides that a qualified production spanning two years shall have all qualified expenditures from both state fiscal years certified for the latter state fiscal year. Excludes commercials and music videos.
- Requires a qualified high-impact television series file an application for each state fiscal year in which it is eligible to receive the credit, unless otherwise provided in s. 220.192, F.S.
- Provides that no television series shall receive a tax credit after its fifth production season in the state.

The Finance & Tax Committee adopted a strike-all amendment on April 17, 2006. This amendment restructured and clarified the Entertainment Industry Financial Incentive Program. In brief, the amendment does the following:

- Returns the Entertainment Industry Financial Incentive Program to its original location in ch. 288 of the statutes and creates sections in chs. 212 and 220 regarding the administration of the tax credits.
- Reduces the length of the program from eight years to three years.
- Reduces the total amount of credits allotted over the life of the program from $200 million to $75 million.
- Clarifies that only the corporate income tax credits may be transferred.
- Removes the requirement that a qualified production company must exhaust all of its tax liability before selling or transferring any of its tax credits, in whole or in part.
- Allows tax credits applied toward the sales and use tax to be carried forward up to five years.
- Limits the number of sales or transfers per qualified film production to three
- Requires that a transfer of credits must be for at least ten percent of the total credit value of the qualified film production.
- Makes the sales and use tax refund a once per taxable year program (instead of a monthly filing procedure).
- Clarifies that there is no time limit to when a credit can be transferred, although the credit is only valid for five years.
- Allows DOR, OTTED, and OFE to share information regarding the Entertainment Industry Financial Incentive Program.

CHAMBER ACTION

The Finance & Tax Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to entertainment industry economic development; amending s. 212.08, F.S.; providing for an entertainment industry credit of sales and use taxes paid on qualified expenditures; providing criteria, requirements, procedures, and limitations on the credit; providing for uses of the credit; providing duties and responsibilities of the Office of Film and Entertainment and the Department of Revenue; authorizing the Office of Tourism, Trade, and Economic Development to adopt rules; providing for liability for fraudulent credit applications; amending s. 213.053, F.S.; authorizing the Department of Revenue to provide certain tax credit and tax refund information to the Office of Film and Entertainment and the Office of Tourism, Trade, and Economic Development; amending s. 220.02, F.S.; revising the order of priority list of applicable credits against certain taxes; creating s. 220.192, F.S.; providing for an entertainment industry corporate income tax credit of a

percentage of certain qualified expenditures; providing criteria, requirements, procedures, and limitations on the credit; providing for uses and allocations of the credit; authorizing the Office of Tourism, Trade, and Economic Development to adopt rules; providing for liability for fraudulent credit applications; providing for use and carryforward of the credit; providing for transfers of the credit; providing for noncorporate distributions of tax credits; authorizing the Department of Revenue to adopt rules; amending s. 288.1254, F.S.; revising the entertainment industry financial incentive program to provide corporate income tax and sales and use tax credits to qualified entertainment entities rather than reimbursements from appropriations; revising provisions relating to definitions, creation and scope, application procedures, approval process, eligibility, required documents, qualified productions, and annual reports; providing criteria and limitations for awards of tax credits; providing marketing requirements; requiring the Office of Tourism, Trade, and Economic Development and Department of Revenue to adopt rules; providing liability for reimbursement of certain costs and fees associated with fraudulent applications; providing for future repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (r) is added to subsection (5) of section 212.08, Florida Statutes, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.--

(r) Entertainment industry tax credit; authorization; eligibility for credits.--

1. Beginning July 1, 2006, a qualified production company is eligible for tax credits of taxes paid on qualified expenditures as defined in s. 288.1254 as provided in this paragraph:

a. The credit shall be granted as a refund of sales and use tax paid by a qualifying production company on qualified expenditures in the fiscal year preceding the date of application.

b. To be eligible to receive the credit, an applicant must be a qualified production company as defined in s. 288.1258(1)(b).

c. A qualified production company may not be awarded more than $2 million in tax credits under this paragraph and s. 220.192 per year unless the production is a high-impact television series, in which case the qualified production shall be eligible for a maximum tax credit award of $3 million. The tax credit available under this paragraph shall only be

surrendered in satisfaction of the tax owed by a qualified production company under this chapter and only up to the face amount of the credit. If the qualified production company cannot use the entire tax credit in the taxable year in which the credit is approved, any excess may be carried over to a succeeding taxable year. A tax credit granted under this paragraph and applied against taxes imposed under this chapter may be carried forward only for a maximum of 5 taxable years following the taxable year in which the credit was approved. Five years after the date a credit is granted under this paragraph, the credit expires and may not be used.

d. The aggregate amount of tax credits allowed under this paragraph and s. 220.192 in any state fiscal year is $25 million. If the total amount of allocated tax credits applied for in any state fiscal year exceeds the aggregate amount of tax credits authorized annually under this paragraph, such excess shall be treated as having been applied for on the first day of the next state fiscal year in which tax credits remain available for allocation. However, no more than an aggregate amount of $30 million in tax credits shall be allocated between July 1, 2006, and June 30, 2007. The cumulative amount of credits that may be allocated between July 1, 2006, and June 30, 2009, shall not exceed $75 million. At such time as $75 million of tax credits have been allocated, no additional tax credits may be allocated.

e. The tax credits awarded under this paragraph may only be used by the qualified production company to whom the credits were awarded. Credits awarded under this paragraph may not be sold, assigned, or otherwise transferred, in whole or in part.

2.a. To be eligible to receive the credit provided by this paragraph, a qualified production company shall apply to the Office of Film and Entertainment prior to September 1 of each year for a refund of sales and use taxes paid on qualified expenditures in the preceding fiscal year.

b. The Office of Film and Entertainment shall develop, with the cooperation of the department, a standardized application form for use in applying for the credit.

c. Upon receipt of an application, the Office of Film and Entertainment shall review the application and information and determine whether or not the application is complete within 10 working days. An application shall not be considered complete unless the application includes copies of invoices upon which Florida sales tax is separately stated, other proof that Florida tax was paid on the purchase of the qualified expenditures, and other documentation as required by the department. The Office of Film and Entertainment shall notify the applicant within 15 calendar days of any deficiencies in the application. Upon receipt of a completed application, the Office of Film and Entertainment shall evaluate the application for credit under this paragraph and issue an approval or a denial to the applicant within an additional 15 calendar days. The Office of Film and Entertainment shall provide the department with a copy of each completed application that has been approved. Within 30 days after receiving a copy of an approval, the department shall issue a refund directly to the qualified production company in the amount shown on the approval issued by the Office of Film

and Entertainment, notwithstanding the provisions of s. 215.26. The provisions of s. 212.095 do not apply to this paragraph.

d. The Office of Tourism, Trade, and Economic Development may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this paragraph, including, but not limited to, rules specifying requirements for the application and approval process, records required for substantiation of credit awards, and determination of and qualification for credit awards.

3.a. Any applicant who submits an application under this paragraph that includes fraudulent information is liable for reimbursement of the reasonable costs and fees associated with the review, processing, investigation, and prosecution of the application.

b. An eligible entity or company that obtains a credit payment under this paragraph through a claim that is fraudulent is liable for reimbursement of the credit amount paid plus a penalty in an amount double the credit payment and reimbursement of reasonable costs, which penalty is in addition to any criminal penalty to which the entity or company is liable for the same acts, plus interest. The entity or company is also liable for costs and fees incurred by the state in investigating and prosecuting the fraudulent claim.

Section 2. Paragraph (k) of subsection (7) of section 213.053, Florida Statutes, is amended, and paragraph (y) is added to that subsection, to read:

213.053 Confidentiality and information sharing.--

(7) Notwithstanding any other provision of this section, the department may provide:

(k)1. Payment information relative to chapters 199, 201, 212, 220, 221, and 624 to the Office of Tourism, Trade, and Economic Development, or its employees or agents that are identified in writing by the office to the department, in the administration of the tax refund program for qualified defense contractors authorized by s. 288.1045 and the tax refund program for qualified target industry businesses authorized by s. 288.106.

2. Information relative to tax credits taken by a business under s. 220.191 and exemptions or tax refunds received by a business under s. 212.08(5)(j) and (r) to the Office of Tourism, Trade, and Economic Development, or its employees or agents that are identified in writing by the office to the department, in the administration and evaluation of the capital investment tax credit program authorized in s. 220.191 and the semiconductor, defense, and space tax exemption program authorized in s. 212.08(5)(j).

(y) Information relative to tax credits taken under s. 220.192 and tax refunds received by a business under s. 212.08(5)(r) to the Office of Film and Entertainment and the Office of Tourism, Trade, and Economic Development.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a

misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

Section 3. Subsection (8) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.--

(8) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: those enumerated in s. 631.828, those enumerated in s. 220.191, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 220.1895, those enumerated in s. 221.02, those enumerated in s. 220.184, those enumerated in s. 220.186, those enumerated in s. 220.1845, those enumerated in s. 220.19, those enumerated in s. 220.185, ~~and~~ those enumerated in s. 220.187, and those enumerated under s. 220.192.

Section 4. Section 220.192, Florida Statutes, is created to read:

220.192 Entertainment industry tax credit; authorization; eligibility for credits.--

(1) TAX CREDITS; ELIGIBILITY; AWARD; ALLOCATION.--Beginning July 1, 2006, a qualified production company is eligible for tax credits in the amount of 15 percent of qualified expenditures, as defined in s. 288.1254.

(a) The credit shall be granted against the tax imposed and owing under this chapter by a qualifying production company for the taxable year in which the application was granted.

(b) To be eligible to receive the credit, an applicant must be a qualified production company as defined in s. 288.1258(1)(b).

(c) A qualified production company may not be awarded more than a total of $2 million in tax credits under this section and s. 212.08 per year unless the production is a high-impact television series, in which case the production shall be eligible for a maximum total tax credit award of $3 million. The tax credit available under this section shall only be surrendered in satisfaction of the tax owed under this chapter by a qualified production company under this chapter and only up to the face amount of the credit. If the qualified production company cannot use the entire tax credit in the taxable year in which the credit is approved, any excess may be carried over to a succeeding taxable year. A tax credit granted under this section and applied against taxes imposed under this chapter may be carried forward only for a maximum of 5 taxable years following the taxable year in which the credit was approved. Five years after the date a credit is granted under this section, the credit expires and may not be used.

(d) The aggregate amount of tax credits allowed under this section and s. 212.08(5)(r) in any state fiscal year is $25 million. If the total amount of allocated tax credits applied for in any state fiscal year exceeds the aggregate amount of tax credits authorized annually under this section, such excess shall be treated as having been applied for on the first day of the next state fiscal year in which tax credits remain available for allocation. However, no more than an aggregate amount of $30

million in tax credits shall be allocated between July 1, 2006, and June 30, 2007. The cumulative amount of credits that may be allocated between July 1, 2006, and June 30, 2009, shall not exceed $75 million. At such time as $75 million of tax credits have been allocated, no additional tax credits may be allocated.

(2) RULES.--The Office of Tourism, Trade, and Economic Development may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section, including, but not limited to, rules specifying requirements for the application and approval process, records required for substantiation of credit awards, and determination of and qualification for credit awards.

(3) FRAUDULENT CLAIMS.--

(a) Any applicant who submits an application under this section that includes fraudulent information is liable for reimbursement of the reasonable costs and fees associated with the review, processing, investigation, and prosecution of the application.

(b) An eligible entity or company that obtains a credit payment under this section through a claim that is fraudulent is liable for reimbursement of the credit amount paid plus a penalty in an amount double the credit payment and reimbursement of reasonable costs, which penalty is in addition to any criminal penalty to which the entity or company is liable for the same acts, plus interest. The entity or company is also liable for costs and fees incurred by the state in investigating and prosecuting the fraudulent claim.

(4) USE OF TAX CREDIT; CARRY FORWARD.--The tax credit available under this section shall only be surrendered in

satisfaction of the tax owed by a qualified production company under this chapter and only up to the face amount of the credit. If the qualified production company cannot use the entire tax credit in the taxable year in which the credit is approved, any excess may be carried over to a succeeding taxable year. A tax credit granted under this section and applied against taxes imposed under this chapter may be carried forward only for a maximum of 5 taxable years following the taxable year in which the credit was approved. Five years after the date a credit is granted under this section, the credit expires and may not be used.

(5) TRANSFER OF TAX CREDITS.--Upon application to and approval by the Department of Revenue, a qualified production company may sell, in whole or in part, a tax credit granted under this section. The sale or assignment of any amount of the tax credit shall not be exchanged for consideration received by the qualified production company of less than 85 percent of the transferred amount of tax credit. The qualified production company must transfer at least 10 percent of the remaining credits to each purchaser and may not conduct more than three transfers. The purchaser of the tax credit granted under s. 288.1254 shall use the tax credit in the state fiscal year the tax credit is acquired from the qualified production company and otherwise may carry the tax credit over subject to the same limitations on tax credit usage as the qualified production company awarded the tax credit. The purchaser of the tax credit may not sell or otherwise transfer the tax credit. The

Department of Revenue may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this subsection.

(6) NONCORPORATE DISTRIBUTIONS OF TAX CREDITS.--A qualified production company that is not a corporation as defined in s. 220.03 shall elect to make an application to the Department of Revenue to distribute tax credits awarded under this section to its partners or members in proportion to the respective distributive share of such partners' or members' income or loss in the taxable fiscal year in which such tax credits were approved. A tax credit granted under this section and applied against taxes imposed under this chapter may be carried forward only for a maximum of 5 taxable years following the state fiscal year in which the credit was approved.

(7) USE OF TAX CREDITS.--A qualified production company may use the tax credit against the tax liability imposed under this chapter, in whole or in part, or against the sales tax paid on qualified expenditures as defined in s. 288.1254.

(8) AGGREGATE TAX CREDIT AVAILABLE.--The aggregate amount of tax credits allowed under this section in any state fiscal year is $25 million. If the total amount of allocated tax credits applied for in any state fiscal year exceeds the aggregate amount of tax credits authorized annually under this section, such excess shall be treated as having been applied for on the first day of the next state fiscal year in which tax credits remain available for allocation. However, no more than an aggregate amount of $30 million in tax credits granted under this section or s. 212.08(5)(r) shall be allocated between July 1, 2006, and June 30, 2007. The cumulative amount of credits

that may be allocated between July 1, 2006, and June 30, 2009, may not exceed $75 million. At such time as $75 million of tax credits granted under this section or s. 212.08(5)(r) have been allocated, no additional tax credits shall be allocated.

(9) RULES.--The Department of Revenue may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer the provisions of this section, including rules governing the manner and form of documentation required to claim tax credits granted or transferred under this section, and may establish guidelines as to the requirements for an affirmative showing of qualification for tax credits granted or transferred under this section.

Section 5. Section 288.1254, Florida Statutes, is amended to read:

288.1254 Entertainment industry financial incentive program; creation; purpose; definitions; application procedure; approval process; ~~reimbursement~~ eligibility; submission of required documentation; recommendations for credit award ~~payment~~; policies and procedures; fraudulent claims.--

(1) CREATION AND PURPOSE OF PROGRAM.--~~Subject to specific appropriation,~~ There is created within the Office of Film and Entertainment an entertainment industry financial incentive program. The purpose of this program is to encourage the use of this state as a site for filming and developing and sustaining the workforce and infrastructure ~~providing production services~~ for filmed entertainment.

(2) DEFINITIONS.--As used in this section, the term:

(a) "Filmed entertainment" means a theatrical or direct-to-video motion picture, a made-for-television motion picture teleproduction, a commercial, a music video, an industrial or educational film, a promotional video or film, a documentary film, a television pilot, a television special, a presentation for a television pilot, a television series, including, but not limited to, a drama, a reality, a comedy, a soap opera, a telenovela, a game show, and a miniseries production, or a digital-media-effects production by the entertainment industry to be sold or displayed in an electronic medium, excluding news shows and sporting events. As used in this paragraph, the term "motion picture" means a motion picture made on or by film, tape, or otherwise and produced by means of a motion picture camera, electronic camera or device, tape device, any combination of the foregoing, or any other means, method, or device now used or which may hereafter be adopted. As used in this paragraph, the term "digital-media-effects" means visual elements created through the modification of already existing or newly created visual elements for film, video, or animated media through the use of digital 2D/3D animation or painting, motion capture, or compositing technologies. ~~For purposes of this section, the term "filmed entertainment" does not include the electronic gaming industry or sporting events.~~

(b) "High-impact television series" means a production created to run multiple production seasons with an estimated order of at least seven episodes per season and qualified expenditures of at least $625,000 per episode.

(c) ~~(b)~~ "Production costs" means the costs of ~~real,~~ tangible~~,~~ and intangible property used and services performed primarily or customarily in the production, including preproduction and postproduction, of qualified filmed entertainment. Production costs generally include, but are not limited to:

1. Wages, salaries, or other compensation, including amounts paid through payroll service companies, for technical and production crews, directors, producers, and performers ~~who are residents of this state~~.

2. Expenditures for sound stages, backlots, production editing, digital effects, sound recordings, sets, and set construction.

3. Expenditures for rental equipment, including, but not limited to, cameras and grip or electrical equipment.

4. Expenditures for meals, travel, and accommodations~~, and goods used in producing filmed entertainment that is located and doing business in this state~~.

5. Expenditures for goods and services used in producing filmed entertainment.

(d) ~~(c)~~ "Qualified expenditures" means production costs incurred in this state within the current state fiscal year for goods purchased or leased from or services provided by ~~purchased, leased, or employed from a resident of this state or~~ a vendor or supplier who is located and doing business in this state or payments to residents of this state in the form of salary, wages, or other compensation, ~~but~~ excluding wages, salaries, or other compensation paid to the two highest-paid

residents of this state participating in the qualified production ~~employees~~.

(e) ~~(d)~~ "Qualified production" means filmed entertainment that meets or exceeds minimum qualified ~~makes~~ expenditures required in this state for the total or partial production of filmed entertainment. Productions that are deemed by the Office of Film and Entertainment to contain obscene content, as defined by the United States Supreme Court, are not qualified productions. ~~Also, a production is not a qualified production if it is determined that the first day of principal photography in this state occurred on or before the date of submitting its application to the Office of Film and Entertainment or prior to certification by the Office of Tourism, Trade, and Economic Development.~~

(f) ~~(e)~~ "Qualified production company ~~relocation project~~" means a corporation, limited liability company, partnership, ~~corporate headquarters,~~ or other legal ~~private~~ entity engaged in the production of filmed entertainment ~~that is domiciled in another state or country and relocates its operations to this state, is organized under the laws of this or any other state or country, and includes as one of its primary purposes digital media effects or motion picture and television production, or postproduction~~.

(3) APPLICATION PROCEDURE; APPROVAL PROCESS.--

(a) Any company engaged in this state in producing filmed entertainment may submit an application to the Office of Film and Entertainment for the purpose of determining qualification for an award of credits against the taxes by the sales tax paid

on qualified expenditures as defined in s. 288.1254 and the corporate income tax imposed by chapter 220 ~~receipt of reimbursement provided in this section~~. The office must be provided information required to determine if the production is a qualified production and to determine the qualified expenditures, production costs, and other information necessary for the office to determine ~~both~~ eligibility for the tax credit ~~and level of reimbursement~~.

(b) ~~A digital media effects company in the state which furnishes digital material to filmed entertainment may submit an application to the Office of Film and Entertainment for the purpose of determining qualification for receipt of reimbursement authorized by this section. The office must be provided information required to determine if the company is qualified and to determine the amount of reimbursement.~~

~~(c) Any corporation, limited liability company, partnership, corporate headquarters, or other private entity domiciled in another state which includes as one of its primary purposes digital media effects or motion picture and television production and which is considering relocation to this state may submit an application to the Office of Film and Entertainment for the purpose of determining qualification for reimbursement under this section.~~

~~(d)1. The Office of Film and Entertainment shall establish a process by which an application is accepted and reviewed and reimbursement eligibility and reimbursement amount are determined. The Office of Film and Entertainment may request~~

~~assistance from a duly appointed local film commission in determining qualifications for reimbursement and compliance.~~

1.~~2.~~ The Office of Film and Entertainment shall develop a standardized application form for use in qualifying an applicant as ~~approving~~ a qualified production~~, a qualified relocation project, or a company qualifying under paragraph (a), paragraph (b), or paragraph (c)~~. The application form for qualifying an applicant as a qualified production must include, but need not be limited to, production-related information on employment, proposed total production budgets, planned expenditures in this state ~~which are intended for use exclusively as an integral part of preproduction, production, or postproduction activities engaged primarily in this state~~, and a signed affirmation from the applicant ~~Office of Film and Entertainment~~ that the information on the application form has been verified and is correct. The application form shall be distributed to applicants by the Office of Film and Entertainment or local film commissions.

2.~~3.~~ Within 10 business days after receipt of an application, the Office of Film and Entertainment shall review the application to determine if the application contains all the information required by this subsection and meets the criteria set out in this section. The office shall qualify all applications that contain the information and meet the criteria set out in this section as eligible to receive a tax credit or shall notify the applicant that the requirements for qualification have not been met. If the application is qualified, the office shall recommend to the Office of Tourism,

Trade, and Economic Development approval of the maximum amount of the tax credit to be awarded. ~~The Office of Film and Entertainment must complete its review of each application within 5 days after receipt of the completed application, including all required information, and it must notify the applicant of its determination within 10 business days after receipt of the completed application and required information.~~

3.~~4.~~ Within 10 business days after receiving notice from the Office of Film and Entertainment of qualification of an applicant as a qualified production and a recommended approval of the maximum amount of tax credit to be awarded, the Office of Tourism, Trade, and Economic Development shall certify the maximum tax credit award, if any. The certification shall be transmitted to the applicant and to the executive director of the Department of Revenue. The applicant shall be responsible for forwarding a certified application to the Department of Revenue. ~~Upon determination that all criteria are met for qualification for reimbursement, the Office of Film and Entertainment shall notify the applicant of such approval. The office shall also notify the Office of Tourism, Trade, and Economic Development of the applicant approval and amount of reimbursement required. The Office of Tourism, Trade, and Economic Development shall make final determination for actual reimbursement.~~

4.~~5.~~ The Office of Film and Entertainment shall deny an application if the office ~~it~~ determines that:

a. The application is not complete or does not meet the requirements of this section; or

b. The tax credit amount ~~reimbursement~~ sought does not meet the requirements of this section ~~for such reimbursement~~.

(4) CREDIT ~~REIMBURSEMENT~~ ELIGIBILITY; SUBMISSION OF REQUIRED DOCUMENTATION; APPLICATION ~~RECOMMENDATIONS~~ FOR TRANSFER ~~PAYMENT~~.--

(a) Tax credit award.--A production of filmed entertainment that is qualified by the Office of Film and Entertainment and is certified by the Office of Tourism, Trade, and Economic Development is eligible for corporate tax credits granted pursuant to s. 220.192 and credits against sales tax paid on qualified expenditures pursuant to s. 212.08(5)(r) in an amount equal ~~a reimbursement of up~~ to 15 percent of its qualified ~~qualifying~~ expenditures.

(b) Production spanning 2 state fiscal years.--A qualified production that starts in one state fiscal year and finishes in the next state fiscal year shall have all qualified expenditures from both state fiscal years certified for the latter state fiscal year. This requirement does not apply to the commercials and music video queue described in subparagraph (d)3.

(c) Aggregate tax credit available.--The aggregate amount of tax credits allowed under this section in any state fiscal year is $25 million. If the total amount of allocated tax credits applied for in any state fiscal year exceeds the aggregate amount of tax credits authorized annually under this section, such excess shall be treated as having been applied for on the first day of the next state fiscal year in which tax credits remain available for allocation. However, no more than an aggregate amount of $30 million in tax credits granted

pursuant to this section and ss. 212.08(5)(r) and 220.192 shall be allocated between July 1, 2006, and June 30, 2007. The cumulative amount of credits that may be allocated between July 1, 2006, and June 30, 2009, may not exceed $75 million. At such time as $75 million of tax credits granted pursuant to this section and ss. 212.08(5)(r) and 220.192 have been allocated, no additional tax credits may be allocated ~~in this state on a filmed entertainment program that demonstrates a minimum of $850,000 in total qualified expenditures for the entire run of the project, versus the budget on a single episode, within the fiscal year from July 1 to June 30. However, the maximum reimbursement that may be made with respect to any filmed entertainment program is $2 million. All reimbursements under this section are subject to appropriation~~.

(d) Filmed entertainment queues.--Tax credits awarded ~~Payments~~ under this section in a state fiscal year shall be made to qualified productions according to a production's principal photography start date, for those qualified productions having entered into the first queue as cited in subparagraph 1. or the second queue cited in subparagraph 2. within the first 2 weeks after the queue's opening. All other qualified productions entering into either queue after the initial 2-week openings shall be on a first-come, first-served basis ~~until the appropriation for that fiscal year is exhausted. On February 1 of each year, the remaining funds within both queues shall be combined into a single queue and distributed based on a project's principal photography start date. The eligibility of qualified productions may not carry over from year to year, but~~

~~such productions may reapply for eligibility under the guidelines established for doing so. The Office of Film and Entertainment shall develop a procedure to ensure that qualified productions continue on a reasonable schedule until completion. If a qualified production is not continued according to a reasonable schedule, the office shall withdraw its eligibility and reallocate the funds to the next qualified productions already in the queue that have yet to receive their full maximum or 15-percent financial reimbursement, if they have not started principal photography by the time the funds become available~~.

1. Film, television, and episodic queue.--Theatrical or direct-to-video motion pictures, made-for-television movies, ~~commercials, music videos,~~ industrial and educational films, promotional videos or films, documentary films, television specials, television series, including, but not limited to, miniseries and telenovelas, and digital-media-effects productions by the entertainment industry to be sold or displayed in an electronic medium that demonstrate a minimum of $625,000 in total qualified expenditures for the entire run of the project, which, for a television series, means a season even if the season is not completed in the same state fiscal year in which principal photography began, shall have their own separate queue established, and such queue shall have dedicated to it 60 percent of all available tax credits in any state fiscal year for which this section applies. The maximum tax credit award that may be made from this queue for any single production is $2 million unless the production is a high-impact television series, in which case the production shall be eligible for a

maximum tax credit award of $3 million, provided such production meets the other criteria of this section. On March 1 of each year, the remaining tax credits within this queue shall be merged into a general queue and may be used for other purposes of this section as determined by the Office of Film and Entertainment. A television series, including, but not limited to, a qualified high-impact television series, is not eligible for a tax credit award under this section after its fifth production season in this state. A qualified high-impact television series shall be allowed first position in this queue for its first five production seasons in this state if the application is received by the Office of Film and Entertainment within the first 2 weeks after the queue's opening. A qualified high-impact television series must file an application for each state fiscal year in which it is eligible to receive the credit, unless otherwise provided in this section ~~of the state incentive money~~.

2. Television pilot queue.--Television pilots and~~,~~ presentations for television pilots for television series intended to be shot in this state and~~, or television series, including, but not limited to, drama, reality, comedy, soap opera, telenovela, game show, or miniseries productions, by the entertainment industry to be~~ sold or displayed in an electronic medium that demonstrate a minimum of $625,000 in total qualified expenditures for the pilot episode or presentation shall have their own separate queue established, and such queue shall have dedicated to it 20 ~~40~~ percent of all available tax credits in any given state fiscal year for which this section applies. The

maximum tax credit award that may be made from this queue for any single pilot episode or presentation is $2 million. On March 1 of each year, the remaining tax credits within this queue shall be merged into a general queue and may be used for other purposes of this section as determined by the Office of Film and Entertainment.

3. Commercials and music video queue.--Commercials and music videos by the entertainment industry to be sold or displayed in an electronic medium that demonstrate a minimum of $500,000 in combined total qualified expenditures from a production company during the state fiscal year with a minimum of $75,000 in qualified expenditures for each production shall have their own separate queue established. Such queue shall have dedicated to it 20 percent of available tax credits in any given state fiscal year for which this section applies. The maximum tax credit award that may be made from this queue for any single production company is $500,000 for a state fiscal year. On April 1 of each year, the remaining tax credits within this queue shall be merged into a general queue and may be used for other purposes of this section as determined by the Office of Film and Entertainment.

(e) Loss of eligibility; reallocation of tax credits.--If a qualified production is not continued according to a reasonable schedule or the Office of Film and Entertainment is notified that a qualified production will no longer be produced, the office shall withdraw the production's eligibility for tax credits and reallocate the tax credits to the next qualified productions already in the queue that have yet to receive a full

tax credit if such next qualified productions have not started principal photography by the time the tax credits become available.

(f) Verification of tax credit award.--The Office of Film and Entertainment shall develop a process by which a qualified production that has been certified by the Office of Tourism, Trade, and Economic Development shall submit to the Office of Film and Entertainment, in a timely manner after production ends and after making all of its qualified expenditures, verifying data to substantiate each qualified expenditure. The Office of Film and Entertainment shall report to the Office of Tourism, Trade, and Economic Development the final verified amount of actual qualified expenditures made by the qualified production. The Office of Tourism, Trade, and Economic Development shall then notify the executive director of the Department of Revenue that the qualified production has met all requirements of the incentive program and shall recommend the final amount of the tax credit ~~of the state incentive money~~.

~~(b) A digital media effects company in the state which furnishes digital material to filmed entertainment may be eligible for a payment in an amount not to exceed 5 percent of its annual gross revenues on qualified expenditures as defined in paragraph (2)(c) before taxes or $100,000, whichever is less. A company applying for payment must submit documentation annually as required by the Office of Film and Entertainment for determination of eligibility of claimed billing and determination of the amount of payment for which the company is eligible.~~

(g) ~~(e)~~ Transfer of tax credits.--Upon application and approval by the Department of Revenue, a qualified production company may sell, in whole or in part, a tax credit granted pursuant to this section and s. 220.192. The sale of any amount of the tax credit shall not be exchanged for consideration received by the qualified production company of less than 85 percent of the transferred amount of tax credit. The qualified production company must transfer at least 10 percent of the remaining credits to each purchaser and may not conduct more than three transfers. The purchaser shall surrender the tax credit in the state fiscal year acquired from the qualified production company and otherwise may carry the tax credit over subject to the same limitations on tax credit usage as the qualified production company awarded the tax credit. The purchaser may not sell or otherwise transfer the tax credit. The Department of Revenue may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this paragraph, as provided in paragraph (6)(b). ~~A qualified relocation project that is certified by the Office of Film and Entertainment is eligible for a one-time incentive payment in an amount equal to 5 percent of its annual gross revenues before taxes for the first 12 months of conducting business in its Florida domicile or $200,000, whichever is less. A company applying for payment must submit documentation as required by the Office of Film and Entertainment for determination of eligibility of claimed billing and determination of the amount of payment for which the company is eligible.~~

(h) ~~(d)~~ Noncorporate distribution of tax credits.--A qualified production company that is not a corporation as defined in s. 220.03 shall elect to make an application to the Department of Revenue as provided in paragraph (g) or distribute tax credits awarded under this section to its partners or members in proportion to the respective distributive share of such partners' or members' income or loss in the state fiscal year in which such tax credits were approved. A tax credit granted under this section and applied against taxes imposed under this chapter shall be carried forward only for a maximum of 5 taxable years following the state fiscal year in which the credit was approved. The Department of Revenue may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this paragraph, as provided in paragraph (6)(b)~~, a digital media effects company, or a qualified relocation project applying for a payment under this section must submit documentation for claimed qualified expenditures to the Office of Film and Entertainment~~.

(i) ~~(e)~~ Use of tax credits.--A qualified production company may use the tax credit against the tax liability imposed under s. 220.192, in whole or in part, or against the sales tax paid under chapter 212 in whole or in part ~~The Office of Film and Entertainment shall notify the Office of Tourism, Trade, and Economic Development whether an applicant meets the criteria for reimbursement and shall recommend the reimbursement amount. The Office of Tourism, Trade, and Economic Development shall make the final determination for actual reimbursement~~.

(5) MARKETING REQUIREMENTS.--The Office of Film and Entertainment shall ensure appropriate marketing materials, including, but not limited to, promotions of this state as a tourist or filming destination, are required when appropriate to be included on any filmed entertainment as a condition of receiving a tax credit under this section. The Office of Film and Entertainment shall consult with appropriate entities for the development and implementation of marketing materials.

(6) ~~(5)~~ RULES ~~POLICIES AND PROCEDURES~~.--

(a) The Office of Tourism, Trade, and Economic Development shall adopt rules pursuant to ss. 120.536(1) and 120.54 ~~policies and procedures~~ to implement this section, including, but not limited to, rules specifying requirements for the application and approval process, records required for ~~submission for~~ substantiation of credit awards ~~for reimbursement~~, ~~and~~ determination of and qualification for credit awards, and marketing requirements for credit recipients ~~reimbursement~~.

(b) The Department of Revenue may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer the provisions of this section, including rules governing the manner and form of documentation required to claim tax credits granted or transferred under this section, and may establish guidelines as to the requisites for an affirmative showing of qualification for tax credits granted or transferred under this section.

(7) ~~(6)~~ FRAUDULENT CLAIMS.--

(a) Any applicant who submits an application under this section that includes fraudulent information is liable for

reimbursement of the reasonable costs and fees associated with the review, processing, investigation, and prosecution.

(b) An eligible entity or company that obtains a credit ~~payment~~ under this section through a claim that it knows is fraudulent is liable for reimbursement of the credit ~~amount paid~~ plus a penalty in an amount double the credit ~~payment~~ and reimbursement of reasonable costs, which penalty is in addition to any criminal penalty to which the entity or company is liable for the same acts, plus interest. The entity or company is also liable for costs and fees incurred by the state in investigating and prosecuting the fraudulent claim.

(8) ~~(7)~~ ANNUAL REPORT.--The Office of Film and Entertainment shall provide an annual report for the previous state fiscal year, due October 1, to the Governor, the President of the Senate, and the Speaker of the House of Representatives outlining the return on investment to the state on tax credits awarded ~~funds expended~~ pursuant to this section.

(9) REPEAL.--This section is repealed July 1, 2009.

Section 6. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1357 CS Growth Management
SPONSOR(S): Altman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1194

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	Nelson	Hamby
2) Growth Management Committee	9 Y, 0 N, w/CS	Grayson	Grayson
3) Transportation & Economic Development Appropriations Committee	W/D		
4) State Infrastructure Council		Grayson	Havlicak
5)			

SUMMARY ANALYSIS

HB 1357 w/CS creates the "Interlocal Service Boundary Agreement Act" to provide an alternative process for annexation that allows counties and municipalities to negotiate in good faith to identify municipal service areas and unincorporated service areas, resolve which local government is responsible for providing services and facilities within the municipal service areas, and reduce the number of enclaves.

The bill defines a "municipal service area" as an unincorporated area that has been identified by a municipality that is a party to an interlocal service boundary agreement as an area to be annexed or to receive municipal services from the municipality or its designee. Land within a municipal service area may be annexed by a municipality if consent is obtained using a process for annexation consistent with current statutes or a process, as determined by the agreement, that includes one or more of the following:

- a petition for annexation signed by more than 50 percent of the registered voters in the area proposed for annexation;
- a petition for annexation signed by more than 50 percent of the property owners in the area proposed for annexation; or
- approval by a majority of the registered voters in the area proposed for annexation.

The bill allows an enclave consisting of 20 acres or more within a designated municipal service area to be annexed if statutory consent requirements are met, one or more of the provisions for annexing land within a municipal service area are met, or the municipality receives a petition from one or more property owners who own real property in excess of 50 percent of the total real property in the area proposed for annexation. Enclaves consisting of less than 20 acres and with fewer than 100 registered voters, within a designated municipal service area, may be annexed using a process for securing the consent of the voters, as provided in the interlocal service boundary agreement.

The bill does not appear to have a fiscal impact upon the state. However, it may have an unknown fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The "Municipal Annexation or Contraction Act," ch. 171, F.S., codifies the state's annexation procedures[1] and was enacted in 1974 to ensure sound urban development, establish uniform methods for the adjustment of municipal boundaries, provide for efficient service delivery in areas that become urban, and limit annexation to areas where municipal services can be provided.[2] At the time ch. 171, F.S., was created, the prevailing policy focused on the strength of county governments and regional planning agencies. Consequently, Florida's annexation statutes concentrate on the expansion and contraction of municipal boundaries.[3]

Current annexation policy in Florida has given rise to a number of issues: difficulty in planning to meet future service needs, confusion over logical service areas and maintenance of infrastructure, duplication of essential services, and zoning efforts thwarted by landowners shopping for the best development climate. While existing annexation procedures may adequately address the concerns of landowners within a proposed annexation area, the residents of remaining unincorporated areas or residents of the municipality proposing the annexation also may be significantly affected by the potential loss of revenue or inefficiencies in service delivery.

An area proposed for annexation must be unincorporated, contiguous and reasonably compact.[4] For a proposed annexation area to be contiguous under ch. 171, F.S., a substantial portion of the annexed area's boundary must be coterminous with the municipality's boundary.[5] "Compactness," for purposes of annexation, is defined as the concentration of property in a single area and does not allow for any action that results in an enclave, pocket or "finger areas in serpentine patterns."[6]

A newly annexed area comes under the city's jurisdiction on the effective date of the annexation. Following annexation, a municipality must apply the county's land use plan and zoning regulations until a comprehensive plan amendment is adopted that includes the annexed area in the municipality's future land use map. It is possible for the city to adopt the comprehensive plan amendment simultaneously with the approval of the annexation. However, there is no requirement that a city amend its comprehensive plan prior to annexation.[7] In the interim, a city must apply county regulations or wait to apply its own rules.

The effective date of the annexation determines who receives certain funds. The county share of revenue sharing and the half-cent sales tax is reduced effective July 1 if a parcel is annexed prior to April 1. Should the annexation occur before a city levies millage, the annexed property is subject to the

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[1] Section (2)(c), Art. VIII of the State Constitution provides authority for the Legislature to establish annexation procedures for all counties except Miami-Dade. Annexation can occur using several methods: special act, charter, interlocal service boundary agreement, voluntary annexation or involuntary annexation. Annexation through a special act must meet the notice and referendum requirements of s. 10, Art. III, of the State Constitution.

[2] Section 171.021, F.S.

[3] See, Lance deHaven-Smith, Ph.D., *FCCMA Policy Statement on Annexation*, October 12, 2002, at 16-17, http://www.fccma.org/pdf/FCCMA_Paper_Final_Draft.pdf.

[4] Sections 171.0413-.043, F.S.

[5] Section 171.031(11), F.S.

[6] Section 171.031(12), F.S.

[7] See, 1000 Friends of Fla., Inc. v. Florida Dept. of Community Affairs, 824 So. 2d 989 (Fla.4th DCA 2002).

city millage, but excluded from the municipal service taxing unit. If a county has not levied its non-ad valorem assessments before annexation, the county loses those assessments.

Cities may annex enclaves of 10 acres or less by interlocal agreement with the county under the provisions of s. 171.046, F.S. An enclave is defined in s. 171.031(13), F.S., as any unincorporated improved or developed area lying within a single municipality or surrounded by a single municipality and a manmade or natural obstacle that permits traffic to enter the unincorporated area only through the municipality. Enclaves of 10 acres or less also can be annexed by municipal ordinance when there are fewer than 25 registered voters living in the enclave and at least 60 percent of those voters approve the annexation in a referendum.

Section 171.044, F.S., provides the procedure for a voluntary annexation which occurs when 100 percent of the landowners in an area petition a municipality. In addition to the annexing municipality enacting an ordinance allowing for the annexation to occur, there are certain notice requirements that must be met. This section does not apply where a municipal or county charter provides the exclusive method for voluntary annexation.[8] Also, the voluntary annexation procedures in this section are considered supplemental to any other procedure contained in general or special law.[9]

Sections 171.0413 and 171.042, F.S., establish an electoral procedure for involuntary annexation that allows for separate approval of a proposed annexation in an existing city, at the city's option, and in the area to be annexed. The owners of more than 50 percent of the land in an area proposed for annexation must consent if more than 70 percent of the property in that area is owned by persons that are not registered electors. Also, the governing body of the annexing municipality must prepare a report on the provision of urban services to the area being annexed as well as adopt an ordinance allowing for the annexation and meet certain notice requirements.

A municipality may annex within an independent special district pursuant to s. 171.093, F.S. The municipality, after electing to assume the district's responsibilities and adopting a resolution, may enter into an interlocal agreement to address responsibility for service provision, real estate assets, equipment and personnel. Absent an interlocal agreement, the district continues as the service provider in the annexed area for a period of four years and receives an amount from the city equal to the ad valorem taxes or assessments that would have been collected on the property. Following the four years and any mutually agreed upon extension, the municipality and district must reach agreement on the equitable distribution of property and indebtedness or the matter will proceed in circuit court.

Municipal annexation provides for conflict and tension between many county and municipal governments. The process of annexation often raises issues regarding delivery of services and the costs associated with the delivery of those services, boundaries and land use. During the past two legislative sessions, the Florida League of Cities and the Florida Association of Counties have recommended a statutory resolution to these issues. This compromise proposed a process by which a municipality and a county could work to negotiate the matters of conflict surrounding a particular annexation proposal. The present bill, HB 1357 w/CS, and its companion, SB 1194, also reflect this compromise.

Proposed Changes

HB 1357 w/CS creates the "Interlocal Service Boundary Agreement Act" as part II of ch. 171, F.S., to provide an alternative process for annexation that allows counties and municipalities to jointly determine how services are provided to residents and property. The bill is intended to establish a more flexible process for adjusting municipal boundaries and to address a wider range of the effects of annexation. This bill also is intended to encourage intergovernmental coordination in planning, service

[8] Section 171.044(4), F.S.
[9] *Id.*

delivery, and boundary adjustments and to reduce intergovernmental conflicts and litigation between local governments.

Interlocal Service Boundary Agreement Act: ss. 171.20—171.212, F.S.

Definitions

Section.171.202, F.S., contains definitions for the following terms as used part II of ch. 171, F.S.: chief administrative officer, enclave, independent special district, initiating county, initiating local government, initiating municipality, initiating resolution, interlocal service boundary agreement, invited local government, invited municipality, municipal service area, notified local government, participating resolution, requesting resolution, responding resolution, and unincorporated service area.

Specifically, the bill defines an "interlocal service boundary agreement" as an agreement adopted under part II of chapter 171, F.S., between a county and one or more municipalities, which may include one or more independent special districts.

A "municipal service area" is defined as an unincorporated area that has been identified for annexation in an interlocal agreement by a municipality that is a party to the interlocal agreement. This term also includes an unincorporated area that has been identified in the agreement to receive municipal services from a municipality that is a party to the agreement or the municipality's designee.

The term "unincorporated service area" refers to an unincorporated area that has been identified in an interlocal service boundary agreement and which may not be annexed without the consent of the county. It also may refer to an unincorporated area or incorporated area, or both, that has been identified in an interlocal service boundary agreement to receive municipal services from the county, its designee, or an independent special district.

Process of Initiating an Interlocal Service Boundary Agreement

Section 171.203, F.S., authorizes the governing body of a county and one or more municipalities or independent special districts to enter into an interlocal service boundary agreement. The county, municipality or independent special district may develop a process for reaching an interlocal service boundary agreement that meets certain requirements, or use the process provided in this section.

Initiating Resolution

The process outlined in s. 171.203, F.S., provides that the negotiations for an interlocal service boundary agreement are initiated when a county or municipality adopts an initiating resolution. The initiating resolution must identify an unincorporated area or incorporated area, or both, and the issues to be negotiated. The initiating resolution must include a map or legal description of the unincorporated or incorporated area to be discussed. An independent special district may initiate an interlocal agreement for the sole purpose of dissolving the district, or removing more than 10 percent of the taxable or assessable value of the district. A county's initiating resolution must designate one more invited municipality, while a municipality's initiating resolution may designate an invited municipality. An initiating resolution from a special district must designate one or more municipalities and invite the county.

Responding Resolution

Copies of a county's or municipality's initiating resolution must be provided to every invited municipality, all other municipalities in the county, and each independent special district in the unincorporated area identified in the resolution. Within 60 days of receipt of an initiating resolution, the county or invited municipality must adopt a responding resolution. This responding resolution may identify an additional unincorporated area, incorporated area, or issues for negotiation, and also may invite an additional municipality or independent special district to negotiate. A municipality within the county that is not invited may request participation in the negotiations within a prescribed time frame and the county and invited municipality must consider this request.

After the parties to the negotiations have been determined through the adoption of various resolutions, the county, invited municipalities, participating municipalities, if any, and any independent special districts that elect to participate, are required to begin negotiations within 60 days after receipt of a responding or participating resolution, whichever occurs first. An invited municipality that does not adopt a responding resolution is deemed to have waived its right to participate and is bound by an interlocal service boundary agreement that results from the negotiations. Local governments are authorized to simultaneously negotiate more than one interlocal service boundary agreement. Counties and municipalities that successfully negotiate an interlocal service boundary agreement must adopt the agreement by ordinance; an independent special district must adopt the agreement using a method consistent with its charter.

Issues That May be Addressed in an Interlocal Service Boundary Agreement
The issues that may be addressed by an interlocal service boundary agreement may include, but are not limited to: the identification of a municipal service area and unincorporated service area; the identification of the local government responsible for the delivery or funding of public safety, fire, emergency rescue and medical, water and wastewater, road ownership, construction and maintenance, conservation, parks and recreation, and stormwater management and drainage services within the area; and other services and infrastructure not currently provided by an electric utility or a natural gas transmission company, as long as it does not affect any territorial agreement between electric utilities or pubic utilities, or affect the determination of a territorial dispute by the Florida Public Service Commission. The interlocal service boundary agreement may establish a process and schedule for annexing an area within a designated municipal service area. The agreement also may provide for a procedure by which the local government responsible for water and wastewater services applies for necessary permit modifications to reflect changes in surface water management operating entity responsibilities. The agreement may also include a requirement that all fire and emergency medical services shall be provided by the existing provider of such services to the annexed area, and remain part of the existing municipal service taxing unit or special district, unless and until one the following occurs:

- The county and annexing municipality agree, by interlocal agreement or other legally sufficient means, as to who shall provide these emergency services; or
- A Fire-Rescue Services Element exists for the respective county's comprehensive plan.

Additionally, the interlocal service boundary agreement may establish a process for land-use decisions consistent with part II of ch. 163, F.S., including joint land-use decisions of the county and municipality, and allowing a municipality to adopt land-use changes for areas that are scheduled to be annexed within the term of the interlocal service boundary agreement. If the agreement addresses land use planning, it must provide procedures for the preparation and adoption of plan amendments, the administration of land development regulations, and the issuance of development orders.

The agreement may address other issues related to service delivery and include the transfer of services and infrastructure, fiscal compensation to one county, municipality or independent special district from another local government or special district, and provide for the joint use of facilities and collocation of services. Finally, the agreement may require the municipality to send the county a report on its planned service delivery.

Standing to Challenge Certain Plan Amendments
Each local government that is a party to the interlocal service boundary agreement is required to amend the intergovernmental coordination element of its comprehensive plan no later than six months following entry of the agreement consistent with s.163.3177(6)(h)1., F.S. For purposes of challenging such plan amendment, an affected person includes persons owning real property, residing, or owning or operating a business within the boundaries of the municipal service area and owners of real property abutting real property within the municipal service area that is the subject of the plan amendment, in addition to those affected persons who would have standing under s.163.3184, F.S.

Review by the State Land Planning Agency

A municipality that is party to an interlocal agreement and identifies an unincorporated area for annexation is required to adopt a plan amendment to address future possible annexation. The identified municipal service area must contain: a boundary map of the municipal service area, population projections for the area, and data supporting the provision of public services for the area. The amendment is subject to review by the DCA for compliance with part II of ch. 163, F.S. However, the DCA may not review or approve or disapprove a municipal ordinance relating to municipal annexation or contraction.

Conclusion of Negotiations on an Interlocal Service Boundary Agreement
An interlocal service boundary agreement may be for a term of 20 years or less and must include a provision requiring periodic review with renegotiations to begin at least 18 months prior to its termination date. Once an agreement has been reached, the county and municipality must adopt the agreement by ordinance. A special district that consents to the agreement is required to adopt the agreement using a method consistent with its charter. Nothing in part II of ch. 171, F.S. (which is created by this bill) prohibits a local government from adopting an interlocal service boundary agreement without the consent of an independent special district.

If an interlocal service boundary agreement has not been reached six months after negotiations have commenced, the initiating or invited local governments may declare an impasse in the negotiations and seek to resolve the issues through the conflict resolution procedures in ch. 164, F.S. If the local governments cannot agree at the conclusion of the dispute resolution process, the bill requires the local governments to hold a joint public hearing on the issues raised in the negotiations.

For a period of six months following the failure of the local governments to reach an agreement, the initiating local government may not initiate negotiations to require the responding local government to negotiate the same issues with respect to the same unincorporated areas. Although a local government is not required under this bill to enter into an agreement, local governments are required to negotiate in good faith to the conclusion of the process once it has been initiated. Local governments may negotiate more than one interlocal agreement simultaneously. Local government officials are encouraged to participate actively and directly in the negotiation process for developing an agreement.

The bill states that part II of ch. 171, F.S., does not impair any existing franchise agreement without the consent of the franchisee. Local governments retain their authority under this bill to negotiate franchise agreements for the use of public rights-of-way and providing service.

Annexation Procedures under an Interlocal Service Boundary Agreement
Sections 171.204 and 171.205, F.S., provide procedures under which land identified in an interlocal service boundary agreement for annexation may be annexed by a municipality. These land areas may include areas that may not be annexed by a municipality under existing ch. 171, F.S. Specifically, the bill authorizes a municipality to annex any character of land, including an area that is not contiguous to the municipality's boundaries or creates an enclave if the area is urban in character as defined in s. 171.031(8), F.S. However, the agreement may not allow for the annexation of land within a municipality that is not a party to the agreement or of land that is within another county.

Land within a municipal service area, as identified in the interlocal service boundary agreement, may be annexed by the municipality using a process for annexation consistent with part I of ch. 171, F.S., or using a "flexible" process established in the interlocal agreement. The flexible process may be used to secure the consent of property owners or registered voters residing in the area proposed for annexation with notice to these individuals.

Annexation within the municipal service area must meet the consent requirements in part I of ch. 171, F.S., or the annexation may be achieved by one or more of the following: the filing of a petition for annexation signed by more than 50 percent of the registered voters in the area proposed for annexation, the filing of a petition for annexation signed by more than 50 percent of the property owners in the area proposed for annexation, or upon the approval by a majority of the registered voters

in the area proposed for annexation voting in a referendum on the annexation. If the area to be annexed includes a privately owned solid waste disposal facility, the annexing municipality must set forth in its plan the impacts the annexation of the facility will have on other local governments.

The bill allows the annexation of enclaves consisting of 20 acres or more within a designated municipal service area using a flexible process for securing voter consent, as provided in the interlocal service boundary agreement, with notice to those property owners and residents within the area proposed for annexation. However, the interlocal service boundary agreement may not allow annexation unless the consent requirements of part I of ch. 171, F.S., are met, the provisions described above are met, or the municipality receives a petition from one or more property owners who own real property in excess of 50 percent of the total real property in the area proposed for annexation. Enclaves consisting of less than 20 acres and with fewer than 100 registered voters within a designated municipal service area, may be annexed using a flexible process for securing the consent of the voters, as provided in the interlocal service boundary agreement, with notice to the registered voters and property owners in the area to be annexed. The flexible process may include one or more of described procedures or a referendum of the registered voters who reside in the area proposed to be annexed.

Effect of Interlocal Service Boundary Agreement

Section 171.206, F.S., provides that an interlocal service boundary agreement is binding on the parties. Section 171.207, F.S., provides that part II of ch. 171, F.S., is an alternative provision allowing for the transfer of power resulting from the interlocal service boundary agreement as authorized by s. 4, Art. VIII of the State Constitution. Section 171.208, F.S., authorizes a municipality to exercise extraterritorial powers, including the authority to provide services and facilities within the unincorporated area as provided for in the interlocal service boundary agreement. Similarly, s. 171.209, F.S., authorizes a county to provide services and facilities within a municipality according to the terms of the interlocal service boundary agreement. Section 171.21, F.S., provides for the effect of an interlocal service boundary agreement on a county charter. Section 171.211, F.S., provides that an interlocal service boundary agreement is presumed valid and binding and places the burden of proving the agreement's invalidity on the challenger. Section 171.212, F.S., requires local governments to use ch. 164, F.S., to resolve disputes regarding the construction and effect of an interlocal service boundary agreement under this part. If the procedures in ch. 164, F.S., do not result in resolution of the conflict, a local government may file an action in circuit court not later than 30 days following the conclusion of those procedures.

The bill also amends current provisions in ch. 171, F.S., to:

- require that an ordinance notice for annexation be provided to the county where the municipality is located not fewer than 15 days prior to commencing annexation procedures under s. 171.0413, F.S.;
- provide that failure to provide such notice may be the basis for a cause of action invalidating the annexation;
- require a municipality to send a copy of the ordinance notice for a voluntary annexation to the county where the municipality is located not fewer than 10 days prior to publishing or posting the notice;
- provide that an interlocal service boundary agreement entered into pursuant to part II of ch. 171, F.S., is binding on the parties;
- provide a time limit for initiating an appeal on annexation or contraction; and
- provide that a primary disputing governmental entity that fails to participate in good faith in the conflict assessment meeting, mediation, or other remedies provided for in the Florida Governmental Conflict Resolution Act, shall be required to pay the attorney's fees and costs for that proceeding.

The bill provides an effective date of upon becoming a law.

Chapter 171, F.S.	Proposed Alternative to Chapter 171, F.S.
Character of the Land	
An area proposed for annexation must be incorporated, contiguous and reasonably compact.	As determined by the interlocal service boundary agreement, a municipality may annex any character of land within a municipal service area if it is urban in character, regardless of whether it is not contiguous or would create an enclave.
Involuntary Annexation	
Involuntary annexation requires approval by the registered electors in the area proposed for annexation. If more than 70 percent of the property in a proposed area to be annexed is owned by persons who are not registered electors, the owners of more than 50 percent of the land must consent to the annexation. The governing body of the annexing municipality also may submit the ordinance to a vote of the registered electors in the annexing municipality.	Land within a municipal service area may be annexed by a municipality if consent is attained using a process for annexation consistent with part I of ch. 171, F.S., or a flexible process, as determined by the interlocal service boundary agreement between the county and municipality, that includes one or more of the following: • petition for annexation signed by more than 50 percent of the registered voters in the area proposed for annexation; or • petition for annexation signed by more than 50 percent of the property owners in the area proposed for annexation; or • approval by a majority of the registered voters in the area proposed for annexation voting in a referendum on the annexation.
Voluntary Annexation	
A voluntary annexation occurs when 100 percent of the landowners in an area petition a municipality to be annexed.	Same procedures as ch. 171, F.S.
Enclaves	
Same procedures as involuntary annexation.	Enclaves consisting of 20 acres or more within a designated municipal service area may be annexed using a flexible process for securing voter consent, as provided in the interlocal service boundary agreement with notice to the registered voters and property owners in the area to be annexed. The agreement may not allow annexation unless the consent requirements of part 1 of ch. 171, F.S., are met, one or more of the provisions for annexing land within a municipal service area are met, or the municipality receives a petition from one or more property owners who own real property in excess of 50 percent of the total real property in the area proposed for annexation.
Small Enclaves	
Cities may annex enclaves of 10 acres or less by interlocal agreement with the county or by municipal ordinance if there are fewer than 25 registered voters living in the enclave and at least 60 percent of those voters approve the annexation in a referendum.	Enclaves consisting of less than 20 acres and with fewer than 100 registered voters within a designated municipal service area may be annexed using a flexible process for securing the consent of the voters, as provided in the interlocal service boundary agreement. No voter approval is required.

C. SECTION DIRECTORY:

Section 1: Creates part II of ch. 171, F.S., the "Interlocal Service Boundary Agreement Act."

Section 2: Provides for the designation of ss. 171.011-171.093, F.S., and s. 171.094, F.S., as part I of chp. 171, F.S.

Section 3: Amends s. 171.011, F.S. relating to the chapter title.

Section 4: Amends s. 171.031, F.S., relating to chapter definitions.

Section 5: Amends ss. 171.042(2) and adds (3), F.S., relating to the prerequisites to annexation.

Section 6: Amends s. 171.044(6), F.S., relating to voluntary annexation.

Section 7: Amends s. 171.045, F.S., relating to annexation limited to a single county.

Section 8: Amends s. 171.081, F.S., relating to appeal on annexation or contraction.

Section 9: Creates s. 171.094, F.S., relating to the effect of interlocal service boundary agreements on annexations.

Section 10: Amends s. 163.01(11), F.S., relating to the Florida Interlocal Cooperation Act of 1969.

Section 11: Amends s. 164.1058, F.S., relating to penalties for certain governmental entities for failure to participate in good faith in a conflict assessment meeting.

Section 12: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Unknown. See, FISCAL COMMENTS, below.

2. Expenditures:

   Unknown. See, FISCAL COMMENTS, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Any fiscal impacts to local governments as a result of the bill will depend on the types of actions taken and agreements reached.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Section 4, Art. VIII of the State Constitution provides:

> By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law.

Section 171.207, F.S., declares that the provisions created in the bill are an alternative provision otherwise provided by law as authorized by s. 4, Art. VIII of the State Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Comments

Both the Florida League of Cities[10] and the Florida Association of Counties[11] support this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 4, 2006 the Growth Management Committee adopted an amendment to HB 1357. The amendment addresses the issue of what may be included in an interlocal service boundary agreement. Specifically, the amendment provides that all fire and emergency medical services shall be provided by the existing provider of such services to the annexed area, and remain part of the existing municipal service taxing unit or special district, unless and until one the following occurs:

- The county and annexing municipality agree, by interlocal agreement or other legally sufficient means, as to who shall provide these emergency services; or
- A Fire-Rescue Services Element exists for the respective county's comprehensive plan.

[10] John Wayne Smith, Assistant Director, Legislative and Public Affairs, Florida League of Cities.
[11] Sarah M. Bleakley, Nabors, Giblin & Nickerson, P.A., Special Counsel to Florida Association of Counties.

CHAMBER ACTION

The Growth Management Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to growth management; creating part II of ch. 171, F.S., the "Interlocal Service Boundary Agreement Act"; providing legislative intent with respect to annexation and the coordination of services by local governments; providing definitions; providing for the creation of interlocal service boundary agreements by a county and one or more municipalities or independent special districts; specifying the procedures for initiating an agreement and responding to a proposal for agreements; identifying issues the agreement may or must address; requiring local governments that are a party to the agreement to amend their comprehensive plans; providing for review of the amendment by the state land planning agency; providing an exception to the limitation on plan amendments; specifying those persons who may challenge a plan amendment required by the agreement; providing for negotiation and adoption of the agreement; providing for preservation of certain agreements and

powers regarding utility services; providing for preservation of existing contracts; providing prerequisites to annexation; providing a process for annexation; providing for the effect of an interlocal service boundary area agreement on the parties to the agreement; providing for a transfer of powers; authorizing a municipality to provide services within an unincorporated area or territory of another municipality; authorizing a county to exercise certain powers within a municipality; providing for effect on interlocal agreements and county charters; providing a presumption of validity; providing a procedure to settle a dispute regarding an interlocal service boundary agreement; designating ss. 171.011-171.094 as part I of chapter 171, F.S.; amending ss. 171.011, 171.031, and 171.045, F.S., to conform; amending s. 171.042, F.S.; revising the time period for filing a report; providing for a cause of action to invalidate an annexation; requiring municipalities to provide notice of proposed annexation to certain persons; amending s. 171.044, F.S.; revising the time period for providing a copy of a notice; providing for a cause of action to invalidate an annexation; amending s. 171.081, F.S.; requiring a governmental entity affected by annexation or contraction to initiate conflict resolution procedures under certain circumstances; providing for initiation of judicial review and reimbursement of attorney's fees and costs regarding certain annexations or contractions; creating s. 171.094,

F.S.; providing for the effect of interlocal service boundary agreements adopted under the act; amending s. 163.01, F.S.; providing for the place of filing an interlocal agreement in certain circumstances; amending s. 164.1058, F.S.; providing that a governmental entity that fails to participate in conflict resolution procedures shall be required to pay attorney's fees and costs under certain conditions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Part II of chapter 171, Florida Statutes, consisting of sections 171.20, 171.201, 171.202, 171.203, 171.204, 171.205, 171.206, 171.207, 171.208, 171.209, 171.21, 171.211, and 171.212, is created to read:

171.20 Short title.--This part may be cited as the "Interlocal Service Boundary Agreement Act."

171.201 Legislative intent.--The Legislature intends to provide an alternative to part I for local governments regarding the annexation of territory into a municipality and the subtraction of territory from the unincorporated area of the county. The principal goal of this part is to encourage local governments to jointly determine how to provide services to residents and property in the most efficient and effective manner while balancing the needs and desires of the community. This part is intended to establish a more flexible process for adjusting municipal boundaries and to address a wider range of the effects of annexation. This part is intended to encourage

intergovernmental coordination in planning, service delivery, and boundary adjustments and to reduce intergovernmental conflicts and litigation between local governments. It is the intent of this part to promote sensible boundaries that reduce the costs of local governments, avoid duplicating local services, and increase political transparency and accountability. This part is intended to prevent inefficient service delivery and an insufficient tax base to support the delivery of those services.

171.202 Definitions.--As used in this part, the term:

(1) "Chief administrative officer" means the municipal administrator, municipal manager, county manager, county administrator, or other officer of the municipality, county, or independent special district who reports directly to the governing body of the local government.

(2) "Enclave" has the same meaning as provided in s. 171.031.

(3) "Independent special district" means an independent special district, as defined in s. 189.403, which provides fire, emergency medical, water, wastewater, or stormwater services.

(4) "Initiating county" means a county that commences the process for negotiating an interlocal service boundary agreement through the adoption of an initiating resolution.

(5) "Initiating local government" means a county, municipality, or independent special district that commences the process for negotiating an interlocal service boundary agreement through the adoption of an initiating resolution.

(6) "Initiating municipality" means a municipality that commences the process for negotiating an interlocal service boundary agreement through the adoption of an initiating resolution.

(7) "Initiating resolution" means a resolution adopted by a county, municipality, or independent special district which commences the process for negotiating an interlocal service boundary agreement and which identifies the unincorporated area and other issues for discussion.

(8) "Interlocal service boundary agreement" means an agreement adopted under this part, between a county and one or more municipalities, which may include one or more independent special districts as parties to the agreement.

(9) "Invited local government" means an invited county, municipality, or special district and any other local government designated as such in an initiating resolution or a responding resolution that invites the local government to participate in negotiating an interlocal service boundary agreement.

(10) "Invited municipality" means an initiating municipality and any other municipality designated as such in an initiating resolution or a responding resolution that invites the municipality to participate in negotiating an interlocal service boundary agreement.

(11) "Municipal service area" means one or more of the following as designated in an interlocal service boundary agreement:

(a) An unincorporated area that has been identified in an interlocal service boundary agreement for municipal annexation by a municipality that is a party to the agreement.

(b) An unincorporated area that has been identified in an interlocal service boundary agreement to receive municipal services from a municipality that is a party to the agreement or from the municipality's designee.

(12) "Notified local government" means the county or a municipality, other than an invited municipality, that receives an initiating resolution.

(13) "Participating resolution" means the resolution adopted by the initiating local government and the invited local government.

(14) "Requesting resolution" means the resolution adopted by a municipality seeking to participate in the negotiation of an interlocal service boundary agreement.

(15) "Responding resolution" means the resolution adopted by the county or an invited municipality which responds to the initiating resolution and which may identify an additional unincorporated area or another issue for discussion, or both, and may designate an additional invited municipality or independent special district.

(16) "Unincorporated service area" means one or more of the following as designated in an interlocal service boundary agreement:

(a) An unincorporated area that has been identified in an interlocal service boundary agreement and that may not be annexed without the consent of the county.

(b) An unincorporated area or incorporated area, or both, which have been identified in an interlocal service boundary agreement to receive municipal services from a county or its designee or an independent special district.

171.203 Interlocal service boundary agreement.--The governing body of a county and one or more municipalities or independent special districts within the county may enter into an interlocal service boundary agreement under this part. The governing bodies of a county, a municipality, or an independent special district may develop a process for reaching an interlocal service boundary agreement which provides for public participation in a manner that meets or exceeds the requirements of subsection (12), or the governing bodies may use the process established in this section.

(1) A county, a municipality, or an independent special district desiring to enter into an interlocal service boundary agreement shall commence the negotiation process by adopting an initiating resolution. The initiating resolution must identify an unincorporated area or incorporated area, or both, to be discussed and the issues to be negotiated. The identified area must be specified in the initiating resolution by a descriptive exhibit that includes, but need not be limited to, a map or legal description of the designated area. The issues for negotiation must be listed in the initiating resolution and may include, but need not be limited to, the issues listed in subsection (6). An independent special district may initiate the interlocal service boundary agreement for the purposes of dissolving an independent special district or removing more than

10 percent of the taxable or assessable value of an independent special district.

(a) The initiating resolution of an initiating county must designate one or more invited municipalities. The initiating resolution of an initiating municipality may designate an invited municipality. The initiating resolution of an independent special district must designate one or more invited municipalities and invite the county.

(b) An initiating county shall send the initiating resolution by certified mail to the chief administrative officer of every invited municipality and each other municipality within the county. An initiating municipality shall send the initiating resolution by certified mail to the chief administrative officer of the county, the invited municipality, if any, and each other municipality within the county.

(c) The initiating local government shall also send the initiating resolution to the chief administrative officer of each independent special district in the unincorporated area designated in the initiating resolution.

(2) Within 60 days after the receipt of an initiating resolution, the county or the invited municipality, as appropriate, shall adopt a responding resolution. The responding resolution may identify an additional unincorporated area or incorporated area, or both, for discussion and may designate additional issues for negotiation. The additional identified area, if any, must be specified in the responding resolution by a descriptive exhibit that includes, but need not be limited to, a map or legal description of the designated area. The

additional issues designated for negotiation, if any, must be listed in the responding resolution and may include, but need not be limited to, the issues listed in subsection (6). The responding resolution may also invite an additional municipality or independent special district to negotiate the interlocal service boundary agreement.

(a) Within 7 days after the adoption of a responding resolution, the responding county shall send the responding resolution by certified mail to the chief administrative officer of the initiating municipality, each invited municipality, if any, and the independent special district that received an initiating resolution.

(b) Within 7 days after the adoption of a responding resolution, an invited municipality shall send the responding resolution by certified mail to the chief administrative officer of the initiating county, each invited municipality, if any, and each independent special district that received an initiating resolution.

(c) An invited municipality that was invited by a responding resolution shall adopt a responding resolution in accordance with paragraph (b).

(d) Within 60 days after receipt of the initiating resolution, any independent special district that received an initiating resolution and that desires to participate in the negotiations shall adopt a resolution indicating that the district intends to participate in the negotiation process for the interlocal service boundary agreement. Within 7 days after the adoption of the resolution, the independent special district

shall send the resolution by certified mail to the chief administrative officer of the county, the initiating municipality, each invited municipality, if any, and each notified local government.

(3) A municipality within the county which is not an invited municipality may request participation in the negotiations for the interlocal service boundary agreement. Such a request must be accomplished by adopting a requesting resolution within 60 days after receipt of the initiating resolution or within 10 days after receipt of the responding resolution. Within 7 days after adoption of the requesting resolution, the requesting municipality shall send the resolution by certified mail to the chief administrative officer of the initiating local government and each invited municipality. The county and the invited municipality shall consider whether to allow a requesting municipality to participate in the negotiations, and, if the county and invited municipality agree, the county and invited municipality shall adopt a participating resolution allowing the requesting municipality to participate in the negotiations.

(4) The county, the invited municipalities, the participating municipalities, if any, and the independent special districts, if any have adopted a resolution to participate, shall begin negotiations within 60 days after receipt of the responding resolution or a participating resolution, whichever occurs later.

(5) An invited municipality that fails to adopt a responding resolution shall be deemed to waive its right to

participate in the negotiation process and shall be bound by an interlocal agreement resulting from such negotiation process, if any is reached.

(6) An interlocal service boundary agreement may address any issue concerning service delivery, fiscal responsibilities, or boundary adjustment. The agreement may include, but need not be limited to, provisions that:

(a) Identify a municipal service area.

(b) Identify an unincorporated service area.

(c) Identify the local government responsible for the delivery or funding of the following services within the municipal service area or the unincorporated service area:

1. Public safety.

2. Fire, emergency rescue, and medical.

3. Water and wastewater.

4. Road ownership, construction, and maintenance.

5. Conservation, parks, and recreation.

6. Stormwater management and drainage.

(d) Ensure that the health and welfare of the citizens affected by annexation will be protected by requiring that all fire and emergency medical services be provided by the existing provider of fire and emergency medical services to the annexed area and remain part of the existing municipal service taxing unit or special district, unless and until:

1. The county and annexing municipality reach through interlocal agreement or other legally sufficient means, an agreement as to which governmental entity shall provide such emergency services; or

2. A fire-rescue services element exists for the respective county's comprehensive plan, filed with the state, and the annexing municipality meets the criteria provided in this section.

(e) Address other services and infrastructure not currently provided by an electric utility as defined in s. 366.02 or a natural gas transmission company as defined in s. 368.103. However, this paragraph does not affect any territorial agreement between electrical utilities or public utilities under chapter 366 or affect the determination of a territorial dispute by the Public Service Commission under s. 366.04.

(f) Establish a process and schedule for annexation of an area within the designated municipal service area consistent with s. 171.205.

(g) Establish a process for land-use decisions consistent with part II of chapter 163, including those made jointly by the governing bodies of the county and the municipality, or allow a municipality to adopt land-use changes consistent with part II of chapter 163 for areas that are scheduled to be annexed within the term of the interlocal agreement; however, the county comprehensive plan and land-development regulations shall control until the municipality annexes the property and amends its comprehensive plan accordingly. Comprehensive plan amendments to incorporate the process established by this paragraph are exempt from the twice-per-year limitation under s. 163.3187.

(h) Address other issues concerning service delivery, including the transfer of services and infrastructure and the

fiscal compensation to one county, municipality, or independent special district from another county, municipality, or independent special district.

(i) Provide for the joint use of facilities and the colocation of services.

(j) Include a requirement for a report to the county of the municipality's planned service delivery, as provided in s. 171.042, or as otherwise determined by agreement.

(k) Establish a procedure by which the local government that is responsible for water and wastewater services shall apply, within 30 days after the annexation or subtraction of territory, for any modifications to permits of the water management district or the Department of Environmental Protection which are necessary to reflect changes in the entity that is responsible for managing surface water under such permits.

(7) If the interlocal service boundary agreement addresses responsibilities for land-use planning under chapter 163, the agreement must also establish the procedures for preparing and adopting comprehensive plan amendments, administering land-development regulations, and issuing development orders.

(8) Each local government that is a party to the interlocal service boundary agreement shall amend the intergovernmental coordination element of its comprehensive plan, as described in s. 163.3177(6)(h)1., no later than 6 months following entry of the interlocal service boundary agreement consistent with s. 163.3177(6)(h)1. Plan amendments

required by this subsection are exempt from the twice-per-year limitation under s. 163.3187.

(9) An affected person for the purpose of challenging a comprehensive plan amendment required by paragraph (6)(g) includes a person who owns real property, resides, or owns or operates a business within the boundaries of the municipal service area, and a person who owns real property abutting real property within the municipal service area that is the subject of the comprehensive plan amendment, in addition to other affected persons who would have standing under s. 163.3184.

(10)(a) A municipality that is a party to an interlocal service boundary agreement that identifies an unincorporated area for municipal annexation under s. 171.202(11)(a) shall adopt a municipal service area as an amendment to its comprehensive plan to address future possible municipal annexation. The state land planning agency shall review the amendment for compliance with part II of chapter 163. A municipal service area must contain:

1. A boundary map of the municipal service area.

2. Population projections for the area.

3. Data and analysis supporting the provision of public facilities for the area.

(b) This part does not authorize the state land planning agency to review, evaluate, determine, approve, or disapprove a municipal ordinance relating to municipal annexation or contraction.

(c) Any amendment required by paragraph (a) is exempt from the twice-per-year limitation under s. 163.3187.

(11) An interlocal service boundary agreement may be for a term of 20 years or less. The interlocal service boundary agreement must include a provision requiring periodic review. The interlocal service boundary agreement must require renegotiations to begin at least 18 months before its termination date.

(12) No earlier than 6 months after the commencement of negotiations, either of the initiating local governments or both, the county, or the invited municipality may declare an impasse in the negotiations and seek a resolution of the issues under ss. 164.1053-164.1057. If the local governments fail to agree at the conclusion of the process under chapter 164, the local governments shall hold a joint public hearing on the issues raised in the negotiations.

(13) When the local governments have reached an interlocal service boundary agreement, the county and the municipality shall adopt the agreement by ordinance under s. 166.041 or s. 125.66, respectively. An independent special district, if it consents to the agreement, shall adopt the agreement by final order, resolution, or other method consistent with its charter. The interlocal service boundary agreement shall take effect on the day specified in the agreement or, if there is no date, upon adoption by the county or the invited municipality, whichever occurs later. This part does not prohibit a county or municipality from adopting an interlocal service boundary agreement without the consent of an independent special district, unless the agreement provides for the dissolution of an independent special district or the removal of more than 10

percent of the taxable or assessable value of an independent special district.

(14) For a period of 6 months following the failure of the local governments to consent to an interlocal service boundary agreement, the initiating local government may not initiate the negotiation process established in this section to require the responding local government to negotiate an agreement concerning the same identified unincorporated area and the same issues that were specified in the failed initiating resolution.

(15) This part does not authorize one local government to require another local government to enter into an interlocal service boundary agreement. However, when the process for negotiating an interlocal service boundary agreement is initiated, the local governments shall negotiate in good faith to the conclusion of the process established in this section.

(16) This section authorizes local governments to simultaneously engage in negotiating more than one interlocal service boundary agreement, notwithstanding that separate negotiations concern similar or identical unincorporated areas and issues.

(17) Elected local government officials are encouraged to participate actively and directly in the negotiation process for developing an interlocal service boundary agreement.

(18) This part does not impair any existing franchise agreement without the consent of the franchisee, any existing territorial agreement between electric utilities or public utilities under chapter 366, or the jurisdiction of the Public Service Commission to resolve a territorial dispute involving

electric utilities or public utilities in accordance with s. 366.04. In addition, an interlocal agreement entered into under this section has no effect in a proceeding before the Public Service Commission involving a territorial dispute. A municipality or county shall retain all existing authority, if any, to negotiate a franchise agreement with any private service provider for use of public rights-of-way or the privilege of providing a service.

(19) This part does not impair any existing contract without the consent of the parties.

171.204 Prerequisites to annexation under this part.--The interlocal service boundary agreement may describe the character of land that may be annexed under this part and may provide that the restrictions on the character of land that may be annexed pursuant to part I are not restrictions on land that may be annexed pursuant to this part. As determined in the interlocal service boundary agreement, any character of land may be annexed, including, but not limited to, an annexation of land not contiguous to the boundaries of the annexing municipality, an annexation that creates an enclave, or an annexation where the annexed area is not reasonably compact; however, such area must be urban in character as defined in s. 171.031. The interlocal service boundary agreement may not allow for annexation of land within a municipality that is not a party to the agreement or of land that is within another county. Before annexation of land that is not contiguous to the boundaries of the annexing municipality, an annexation that creates an enclave, or an annexation of land that is not currently served

by water or sewer utilities, one of the following options must be followed:

(1) The municipality shall transmit a comprehensive plan amendment that proposes specific amendments relating to the property anticipated for annexation to the Department of Community Affairs for review under chapter 163. After considering the department's review, the municipality may approve the annexation and comprehensive plan amendment concurrently. The local government must adopt the annexation and the comprehensive plan amendment as separate and distinct actions, but may take such actions at a single public hearing; or

(2) A municipality and county shall enter into a joint planning agreement under s. 163.3171, which is adopted into the municipal comprehensive plan. The joint planning agreement must identify the geographic areas anticipated for annexation, the future land uses that the municipality would seek to establish, necessary public facilities and services, including transportation and school facilities and how such facilities will be provided, and natural resources, including surface water and groundwater resources, and how such resources will be protected. An amendment to the future land-use map of a comprehensive plan which is consistent with the joint planning agreement must be considered a small-scale amendment.

171.205 Consent requirements for annexation of land under this part.--Notwithstanding part I, an interlocal service boundary agreement may provide a process for annexation consistent with this section or with part I.

(1) For all or a portion of the area within a designated municipal service area, the interlocal service boundary agreement may provide a flexible process for securing the consent of persons who are registered voters or own property in the area proposed for annexation, or of both such voters and owners, for the annexation of property within a municipal service area, with notice to such voters or owners as required in the interlocal service boundary agreement. The interlocal service boundary agreement may not authorize annexation unless the consent requirements of part I are met or the annexation is consented to by one or more of the following:

(a) The municipality has received a petition for annexation from more than 50 percent of the registered voters who reside in the area proposed to be annexed.

(b) The annexation is approved by a majority of the registered voters who reside in the area proposed to be annexed voting in a referendum on the annexation.

(c) The municipality has received a petition for annexation from more than 50 percent of the persons who own property within the area proposed to be annexed.

(2) If the area to be annexed includes a privately owned solid waste disposal facility as defined in s. 403.703 which receives municipal solid waste collected within the jurisdiction of multiple local governments, the annexing municipality must set forth in its plan the effects that the annexation of the solid waste disposal facility will have on the other local governments. The plan must also indicate that the owner of the affected solid waste disposal facility has been contacted in

writing concerning the annexation, that an agreement between the annexing municipality and the solid waste disposal facility to govern the operations of the solid waste disposal facility if the annexation occurs has been approved, and that the owner of the solid waste disposal facility does not object to the proposed annexation.

(3) For all or a portion of an enclave consisting of more than 20 acres within a designated municipal service area, the interlocal service boundary agreement may provide a flexible process for securing the consent of persons who are registered voters or own property in the area proposed for annexation, or of both such voters and owners, for the annexation of property within such an enclave, with notice to such voters or owners as required in the interlocal service boundary agreement. The interlocal service boundary agreement may not authorize annexation of enclaves under this subsection unless the consent requirements of part I are met, the annexation process includes one or more of the procedures in subsection (1), or the municipality has received a petition for annexation from one or more persons who own real property in excess of 50 percent of the total real property within the area to be annexed.

(4) For all or a portion of an enclave consisting of 20 acres or fewer within a designated municipal service area, within which enclave not more than 100 registered voters reside, the interlocal service boundary agreement may provide a flexible process for securing the consent of persons who are registered voters or own property in the area proposed for annexation, or of both such voters and owners, for the annexation of property

within such an enclave, with notice to such voters or owners as required in the interlocal service boundary agreement. Such an annexation process may include one or more of the procedures in subsection (1) and may allow annexation according to the terms and conditions provided in the interlocal service boundary agreement, which may include a referendum of the registered voters who reside in the area proposed to be annexed.

171.206 Effect of interlocal service boundary area agreement on annexations.--

(1) An interlocal service boundary agreement is binding on the parties to the agreement, and a party may not take any action that violates the interlocal service boundary agreement.

(2) Notwithstanding part I, without consent of the county and the affected municipality by resolution, a county or an invited municipality may not take any action that violates the interlocal service boundary agreement.

(3) If the independent special district that participated in the negotiation process pursuant to s. 171.203(2)(d) does not consent to the interlocal service boundary agreement and a municipality annexes an area within the independent special district, the independent special district may seek compensation using the process in s. 171.093.

171.207 Transfer of powers.--This part is an alternative provision otherwise provided by law, as authorized in s. 4, Art. VIII of the State Constitution, for any transfer of power resulting from an interlocal service boundary agreement for the provision of services or the acquisition of public facilities

entered into by a county, municipality, independent special district, or other entity created pursuant to law.

171.208 Municipal extraterritorial power.--This part authorizes a municipality to exercise extraterritorial powers that include, but are not limited to, the authority to provide services and facilities within the unincorporated area or within the territory of another municipality as provided within an interlocal service boundary agreement. These powers are in addition to other municipal powers that otherwise exist. However, this power is subject to the jurisdiction of the Public Service Commission to resolve territorial disputes under s. 366.04. An interlocal agreement has no effect on the resolution of a territorial dispute to be determined by the Public Service Commission.

171.209 County powers in an incorporated area.--As provided in an interlocal service boundary agreement, this part authorizes a county to exercise powers within a municipality that include, but are not limited to, the authority to provide services and facilities within the territory of a municipality. These powers are in addition to other county powers that otherwise exist.

171.21 Effect of part on interlocal agreement and county charter.--A joint planning agreement, a charter provision adopted under s. 171.044(4), or any other interlocal agreement between local governments, including a county, municipality, or independent special district, is not affected by this part; however, a county, municipality or independent special district may avail itself of this part, which may result in the repeal or

modification of a joint planning agreement or other interlocal agreement. A local government within a county that has adopted a charter provision pursuant to s. 171.044(4) may avail itself of the provisions of this part which authorize an interlocal service boundary agreement if such interlocal agreement is consistent with the charter of that county, as the charter was approved, revised, or amended pursuant to s. 125.64.

171.211 Interlocal service boundary agreement presumed valid and binding.--

(1) If there is litigation over the terms, conditions, construction, or enforcement of an interlocal service boundary agreement, the agreement shall be presumed valid, and the challenger has the burden of proving its invalidity.

(2) Notwithstanding part I, it is the intent of this part to authorize a municipality to enter into an interlocal service boundary agreement that enhances, restricts, or precludes annexations during the term of the agreement.

171.212 Disputes regarding construction and effect of an interlocal service boundary agreement.--If there is a question or dispute about the construction or effect of an interlocal service boundary agreement, a local government shall initiate and proceed through the conflict resolution procedures established in chapter 164. If there is a failure to resolve the conflict, no later than 30 days following the conclusion of the procedures established in chapter 164, the local government may file an action in circuit court. For purposes of this section, the term "local government" means a party to the interlocal service boundary agreement.

Section 2. Sections 171.011-171.093, Florida Statutes, and section 171.094, Florida Statutes, as created by this act, are designated as part I of chapter 171, Florida Statutes.

Section 3. Section 171.011, Florida Statutes, is amended to read:

171.011 Short title.--This part ~~chapter shall be known and~~ may be cited as the "Municipal Annexation or Contraction Act."

Section 4. Section 171.031, Florida Statutes, is amended to read:

171.031 Definitions.--As used in this part ~~chapter~~, the following words and terms have the following meanings unless some other meaning is plainly indicated:

(1) "Annexation" means the adding of real property to the boundaries of an incorporated municipality, such addition making such real property in every way a part of the municipality.

(2) "Contraction" means the reversion of real property within municipal boundaries to an unincorporated status.

(3) "Municipality" means a municipality created pursuant to general or special law authorized or recognized pursuant to s. 2 or s. 6, Art. VIII of the State Constitution.

(4) "Newspaper of general circulation" means a newspaper printed in the language most commonly spoken in the area within which it circulates, which is readily available for purchase by all inhabitants in its area of circulation, but does not include a newspaper intended primarily for members of a particular professional or occupational group, a newspaper whose primary function is to carry legal notices, or a newspaper that is given away primarily to distribute advertising.

(5) "Parties affected" means any persons or firms owning property in, or residing in, either a municipality proposing annexation or contraction or owning property that is proposed for annexation to a municipality or any governmental unit with jurisdiction over such area.

(6) "Qualified voter" means any person registered to vote in accordance with law.

(7) "Sufficiency of petition" means the verification of the signatures and addresses of all signers of a petition with the voting list maintained by the county supervisor of elections and certification that the number of valid signatures represents the required percentage of the total number of qualified voters in the area affected by a proposed annexation.

(8) "Urban in character" means an area used intensively for residential, urban recreational or conservation parklands, commercial, industrial, institutional, or governmental purposes or an area undergoing development for any of these purposes.

(9) "Urban services" means any services offered by a municipality, either directly or by contract, to any of its present residents.

(10) "Urban purposes" means that land is used intensively for residential, commercial, industrial, institutional, and governmental purposes, including any parcels of land retained in their natural state or kept free of development as dedicated greenbelt areas.

(11) "Contiguous" means that a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality.

The separation of the territory sought to be annexed from the annexing municipality by a publicly owned county park; a right-of-way for a highway, road, railroad, canal, or utility; or a body of water, watercourse, or other minor geographical division of a similar nature, running parallel with and between the territory sought to be annexed and the annexing municipality, shall not prevent annexation under this act, provided the presence of such a division does not, as a practical matter, prevent the territory sought to be annexed and the annexing municipality from becoming a unified whole with respect to municipal services or prevent their inhabitants from fully associating and trading with each other, socially and economically. However, nothing herein shall be construed to allow local rights-of-way, utility easements, railroad rights-of-way, or like entities to be annexed in a corridor fashion to gain contiguity; and when any provision or provisions of special law or laws prohibit the annexation of territory that is separated from the annexing municipality by a body of water or watercourse, then that law shall prevent annexation under this act.

(12) "Compactness" means concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any county in the state shall be designed in such a manner as to ensure that the area will be reasonably compact.

(13) "Enclave" means:

(a) Any unincorporated improved or developed area that is enclosed within and bounded on all sides by a single municipality; or

(b) Any unincorporated improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.

Section 5. Subsection (2) of section 171.042, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

171.042 Prerequisites to annexation.--

(2) Not less than 15 days prior to commencing the annexation procedures under s. 171.0413, the governing body of the municipality shall file a copy of the report required by this section with the board of county commissioners of the county wherein the municipality is located. Failure to timely file the report as required in this subsection may be the basis for a cause of action invalidating the annexation.

(3) The governing body of the municipality shall mail by certified mail, not less than 10 days prior to the date set for the first public hearing required by s. 171.0413(1), a written notice to each person who resides or owns property within the area proposed to be annexed. The notice must describe the annexation proposal, the time and place for each public hearing to be held regarding the annexation, and the place or places within the municipality where the proposed ordinance may be inspected by the public. A copy of the notice must be kept

available for public inspection during the regular business hours of the office of the clerk of the governing body.

Section 6. Subsection (6) of section 171.044, Florida Statutes, is amended to read:

171.044 Voluntary annexation.--

(6) Not less than 10 days prior to ~~Upon~~ publishing or posting the ordinance notice required under subsection (2), the governing body of the municipality must provide a copy of the notice, via certified mail, to the board of the county commissioners of the county wherein the municipality is located. The notice provision provided in this subsection may ~~shall not~~ be the basis for a ~~of any~~ cause of action invalidating ~~challenging~~ the annexation.

Section 7. Section 171.045, Florida Statutes, is amended to read:

171.045 Annexation limited to a single county.--In order for an annexation proceeding to be valid for the purposes of this part ~~chapter~~, the annexation must take place within the boundaries of a single county.

Section 8. Section 171.081, Florida Statutes, is amended to read:

171.081 Appeal on annexation or contraction.--

(1) ~~No later than 30 days following the passage of an annexation or contraction ordinance,~~ Any party affected who believes that he or she will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this part ~~chapter~~ for annexation or contraction or to meet the requirements established for

annexation or contraction as they apply to his or her property may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari. The action may be initiated at the party's option within 30 days following the passage of the annexation or contraction ordinance or within 30 days following the completion of the dispute resolution process in subsection (2). In any action instituted pursuant to this subsection ~~section~~, the complainant, should he or she prevail, shall be entitled to reasonable costs and attorney's fees.

(2) If the affected party is a governmental entity, no later than 30 days following the passage of an annexation or contraction ordinance the governmental entity must initiate and proceed through the conflict resolution procedures established in chapter 164. If there is a failure to resolve the conflict, no later than 30 days following the conclusion of the procedures established in chapter 164 the governmental entity that initiated the conflict resolution procedures may file a petition in the circuit court for the county in which the municipality or municipalities are located seeking review by certiorari. In any legal action instituted pursuant to this subsection, the prevailing party is entitled to reasonable costs and attorney's fees.

Section 9. Section 171.094, Florida Statutes, is created to read:

171.094 Effect of interlocal service boundary agreements adopted under part II on annexations under this part.--

(1) An interlocal service boundary agreement entered into pursuant to part II is binding on the parties to the agreement, and a party may not take any action that violates the interlocal service boundary agreement.

(2) Notwithstanding any other provision of this part, without the consent of the county the affected municipality, or affected independent special district by resolution, a county, an invited municipality, or independent special district may not take any action that violates an interlocal service boundary agreement.

Section 10. Subsection (11) of section 163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.--

(11) Prior to its effectiveness, an interlocal agreement and subsequent amendments thereto shall be filed with the clerk of the circuit court of each county where a party to the agreement is located; however, if the parties to the agreement are located in multiple counties and the agreement, pursuant to subsection (7), provides for a separate legal entity or administrative entity to administer the agreement, the interlocal agreement and any amendments to the interlocal agreement may be filed with the clerk of the circuit court in the county where the legal or administrative entity maintains its principal place of business.

Section 11. Section 164.1058, Florida Statutes, is amended to read:

164.1058 Penalty.--If a primary conflicting governmental entity ~~which has received notice of intent to initiate the~~

~~conflict resolution procedure pursuant to this act~~ fails to participate in good faith in the conflict assessment meeting, mediation, or other remedies provided for in this act, ~~and the initiating governmental entity files suit and is the prevailing party in such suit,~~ the primary disputing governmental entity that ~~which~~ failed to participate in good faith shall be required to pay the attorney's fees and costs in that proceeding of the prevailing primary conflicting governmental entity ~~which initiated the conflict resolution procedure~~.

Section 12. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1363 CS Affordable Housing
SPONSOR(S): Davis and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Growth Management Committee	9 Y, 0 N, w/CS	Grayson	Grayson
2) Local Government Council	7 Y, 0 N, w/CS	Grayson	Hamby
3) Fiscal Council	18 Y, 0 N, w/CS	Dairty	Kelly
4) State Infrastructure Council		Grayson	Havlicak
5)			

SUMMARY ANALYSIS

HB 1363 addresses the issue of affordable housing in Florida by creating the Community Workforce Housing Innovation Program (CWHIP), and by providing financial and regulatory incentives for the provision of affordable housing. The CWHIP will provide grants and incentives to affordable rental and home ownership projects that target: high-cost counties, including certain areas of critical state concern, certain areas formerly so designated, and counties designated as rural areas of critical economic concern; high growth counties; certain public-private partnerships; workforce housing; essential service personnel; and innovative projects. These terms are defined in the bill. The bill provides standards and guidelines for the CWHIP and for the involvement of the Florida Housing Finance Corporation (Corporation). Approved projects are eligible for certain incentives including: expedited permitting and approvals of development orders; impact fee reductions or alternative fee payment methods; increased density levels of 16 units per acre or higher; reduction of open space and setback requirements; and modification of street requirements and concurrency requirements. Certain manufactured housing projects are eligible for grant funding.

The bill further provides a new definition of "extremely-low-income" persons as those with incomes below 30 percent of area median income and a series of changes to existing state and local housing programs to incentivize the development of very low income housing. The bill expands the Community Contribution Tax Credit Program. The bill provides for local governments and the state to inventory and make available surplus lands for affordable housing. The bill authorizes school boards to provide housing and housing assistance to its teachers and other instructional personnel. Specified independent special districts are authorized to provide housing and housing assistance for eligible persons as are special fire control districts. The bill creates "The Manny Diaz Property Tax Relief Initiative" which directs property appraisers to appraise affordable housing properties based upon rental income. The bill provides relief for disabled veterans from paying certain license and permit fees on housing. The bill provides threshold density bonuses for the provision of workforce housing for both the guidelines that determine when an activity constitutes a development of regional impact and when changes constitute a substantial deviation requiring additional review.

The bill appropriates: $50 for the Home Retrofit Hardening Program; $2 million in fixed capital outlay for the Disaster Recovery Assistance Program; $15 million to provide funds to eligible entities for affordable housing recovery from the 2004 and 2005 hurricanes; $25 million for the Farmworker Housing Recovery and Special Assistance and Development Programs; $400,000 for technical and training assistance; $176 million for the Rental Recovery Loan Program; $82,904,000 for affordable housing hurricane recovery; $50 million to implement the Community Workforce Housing Innovation Program; $33 million for housing for extremely low income persons.

The bill may raise concerns relating to an unconstitutional delegation of legislative authority in conflict with s. 1, Art. III, State Constitution. [See: CONSTITUTIONAL ISSUES].

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates new programs, provides additional rulemaking authority for the Florida Housing Finance Corporation, and increases the workload of other governmental organizations.

Ensure lower taxes - The bill will provide increased tax incentives for persons who donate to eligible sponsors for projects that provide homeownership opportunities for low-income and very-low-income and extremely-low-income households and for donations made to eligible sponsors for all other projects that qualify under the Community Contribution Tax Credit Program. The bill provides 100 percent service-connected permanently and totally disabled veterans confined to wheelchairs an exemption on any license or permit fee to make improvement to their residences.

Promote Personal Responsibility and Empower Families - The bill creates a new program to provide subsidized financing and down payment assistance for affordable housing for essential services personnel. The bill also provides assistance for persons with extremely-low-incomes. The bill increases the opportunities of local governments, governmental entities, and private organizations to support, assist, and encourage families in circumstances occasioning need.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

The state has committed significant resources over the last decade to addressing the severe housing problems facing very-low and low-income residents of this state. The Corporation's programs are funded in part with revenues generated by the documentary stamp tax, which are most often coupled with federal funding. These "affordable housing" programs have traditionally targeted families making 60 percent or less of area median income (AMI) in the rental programs, and those making 80 percent or less of AMI in the home ownership programs.

Multifamily rental projects are funded by the Corporation through the State Apartment Incentives Loan Program (SAIL); the Multifamily Mortgage Revenue Bond (MMRB) program, which provide funding by issuing revenue bonds; and through allocation of federal Low Income Housing Tax Credits (LIHTC), which provides an equity infusion to multifamily affordable housing projects. The multifamily rental programs typically target those making 60 percent or less of the AMI. Home ownership programs consist of down payment assistance, funded by documentary stamp funds and federal funds, along with mortgage loans funded by federal funds and the Single Family Mortgage Revenue Bond (SFMRB) program. Also, the Corporation allocates documentary stamp funds to local governments through the State Housing Initiatives Partnership Program (SHIP). The large majority of SHIP funds are directed by statute toward home ownership activities, generally serving those with incomes up to 120 percent AMI.

Federal housing programs, especially those administered by HUD, typically serve those with the lowest incomes. In recent years, budgets for many of these programs have been cut, putting increasing pressure on state and local governments to provide for persons at the lowest income levels. In the current market, the need for affordable housing has outstripped the production capacity of the existing federal, state, and local affordable housing programs.

Due to dramatic increases in housing costs coupled with modest rises in incomes, many low-income and moderate-income Florida families can no longer afford safe, decent and affordable rental and single family housing. In addition to the needs of the very-low and low-income families noted above, recent steep increases in real estate prices have also effectively priced moderate income families out of the market. Florida is experiencing a critical shortage of housing for individuals who are employed in essential service occupations, such as teachers, police, hospital workers, and others who do not qualify for existing affordable housing programs. As a result, many communities are finding it increasingly difficult to recruit, employ, and retain personnel necessary to provide essential public services to Florida's communities.

The need for "workforce housing" to meet existing and future housing needs for working families whose incomes, from 80 percent to 150 percent AMI, typically make them ineligible for existing housing programs, has recently become increasingly evident.

According to the bill sponsor, the bill is designed to stimulate the construction of home ownership and rental housing in high cost and high growth counties to meet the needs of extremely-low, very-low, low and moderate-income families along this continuum and in particular, essential services personnel who are facing tremendous difficulties living in the communities in which they work.

FLORIDA HOUSING FINANCE CORPORATION (CORPORATION) PROGRAMS

The Corporation administers a number of multifamily, single family and special programs that help low-income Floridians obtain safe, decent affordable housing that might otherwise be unavailable to them. The rental housing programs include the Multifamily Mortgage Revenue Bond, Low Income Housing Tax Credits, State Apartment Incentive Loan, Elderly Housing Community Loan, Florida Affordable Housing Guarantee and Home Investment Partnerships programs.

Homeownership programs include the First Time Homebuyer Program, the Homeownership Loan Program and down payment assistance programs such as the Homeownership Assistance Program, HOME Down Payment Assistance, Homeownership Assistance for Moderate Income, and Three Percent Cash Assistance. In addition, the Corporation offers the Mortgage Credit Certificate program; and several Special Programs including the Predevelopment Loan Program, State Housing Initiatives Partnership, Demonstration Loans and the Affordable Housing Catalyst Program. The programs further addressed below are implicated in HB 1363.

STATE ASSISTANCE INITIATIVE LOAN PROGRAM: The State Apartment Incentive Loan Program (SAIL)[1], created in 1992, provides mortgage loans or loan guarantees to sponsors providing affordable housing to very-low income individuals. SAIL is funded by the State Housing Trust Fund and administered by the Corporation.

The Florida Housing Finance Corporation has the authority to underwrite and make state apartment incentive loans or loan guarantees, at an interest rate of three percent to nine percent, to sponsors that:

- Use tax-exempt financing for the first mortgage and at least 20 percent of the units in the project are set aside for persons or families who have incomes which meet the income eligibility requirements of s. 8 of the United States Housing Act of 1937;
- Use taxable financing for the first mortgage and at least 20 percent of the units in the project are set aside for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, which shall be adjusted by the corporation for family size;
- Use the federal low-income housing tax credit, and the project meets the tenant income eligibility requirements of s. 42 of the Internal Revenue Code of 1986; or
- Locate a project in a county that includes, or has included within the previous five years, an area of critical state concern designated or ratified by the Legislature for which the Legislature has declared its intent to provide affordable housing, and 100 percent of the units in the project are set aside for

[1] s. 420.5087, F.S.

person or families who have income below 120 percent of the state or local median income, whichever is higher.

Very-Low Income Fund Reservation: Section 420.5087(3), F.S., requires that during the first 6 months a percentage of SAIL funds be reserved for each of the following groups: commercial fishing workers and farmworkers, families, persons who are homeless, and elderly persons. The percentage of SAIL funds reserved for each group is determined by using the most recent statewide very-low-income rental housing market study available at the time of publication of each notice of fund availability, but the reservation of funds to commercial fishing workers and farmworkers, families, and the elderly may not be less than 10 percent of the funds available at that time. Currently, 24 percent of the total SAIL funds are reserved for the elderly.

Elderly Housing Community Loan Program (EHCL): Section 420.5087(3)(d), F.S., requires that 10 percent of the amount reserved for the elderly be reserved to provide loans to sponsors of housing for the elderly to provide for building preservation, health, or sanitation repairs or improvements which are required by federal, state, or local regulation or code, or lifesafety or security-related repairs or improvements to such housing. This part of the program is referred to as the Elderly Housing Community Loan Program (EHCL). Under the EHCL Program, sponsors are required to match the loan amount received at a rate of 15 percent. Funds received from matching are used to supplement the loan amount received to pay the cost of repair or improvement for which these funds are available.

According to the Florida Housing Finance Corporation, the match requirement is used to leverage state funds and make more fiscally prudent investments. Prior to the increase in the available loan amount, sponsors were awarded additional points during the loan application process for exceeding the minimum match requirement by a certain percentage. With the current increased loan amount and match rate, this process is no longer being used. However, under general operating policy, sponsors are still encouraged to match at the highest percentage possible, which can exceed the minimum percentage amount set in statute.

Prior to 2005, loans under the EHCL Program were capped at $200,000 with the requirement of a minimum match of 15 percent from the sponsor. During the 2005 legislative session, the Legislature increased the maximum loan amount from $200,000 to $750,000. The increase in the maximum loan amount had the practical effect of increasing the potential match requirement from $30,000 to $112,500.

FLORIDA HOUSING OWNERSHIP ASSISTANCE PROGRAM (HAP): The HAP Construction Loan provides a five-year, zero percent interest construction loan to eligible developers for the lesser of 33 percent of the total development cost or $1,000,000. Eligible developers include nonprofit developers and nonprofit sponsors, established pursuant to ch. 617, F.S., and local governments and public housing authorities, with preference given to Corporation certified community based organizations, and to developments that have received funding from Florida Housing's Predevelopment Loan Program.

A minimum of 30 percent of the homes must be sold to eligible homebuyers who have an adjusted income that does not exceed 50 percent of the AMI, and a minimum of another 30 percent of the homes must be sold to eligible homebuyers who have an adjusted income that does not exceed 80 percent AMI. Any remaining homes must be sold to persons or households that have an adjusted income that does not exceed 150 percent AMI.

The HAP Permanent Loan Program provides a zero percent interest nonamortized second mortgage loan to eligible homebuyers purchasing a home built by a participating developer. In order to be eligible, a person's or household's adjusted income cannot exceed 80 percent AMI. This loan is available in an aggregate amount not to exceed the lesser of $30,000, 25 percent of the purchase price of the home, or the amount necessary to meet credit underwriting criteria, based on the monthly mortgage payment to income underwriting ratio. The term of the loan is the lesser of 30 years or the term of the first mortgage, and is due upon maturity, sale, refinancing or rental of the property.

STATE HOUSING INITIATIVES PARTNERSHIP PROGRAM: The Corporation administers the State Housing Initiatives Partnership program (SHIP), which provides funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing. The program was designed to serve very-low, low and moderate income families.

SHIP funds are distributed on an entitlement basis to all 67 counties and 48 Community Development Block Grant entitlement cities in Florida. The minimum allocation is $350,000 and the maximum allocation is over $9 million. In order to participate, local governments must establish a local housing assistance program by ordinance; develop a local housing assistance plan and housing incentive strategy; amend land development regulations or establish local policies to implement the incentive strategies; form partnerships and combine resources in order to reduce housing costs; and ensure that rent or mortgage payments within the targeted areas do not exceed 30 percent of the AMI limits, unless authorized by the mortgage lender.

A minimum of 65 percent of the funds must be spent on eligible homeownership activities; a minimum of 75 percent of funds must be spent on eligible construction activities; at least 30 percent of the funds must be reserved for very-low income households (up to 50 percent of the AMI); an additional 30 percent may be reserved for low income households (up to 80 percent of AMI); and the remaining funds may be reserved for moderate-income households (up to 120 percent of AMI). It is important to note that no more than five percent of SHIP funds may be used for administrative expenses. However, if a local government makes a finding of need by resolution, a local government may use up to 10 percent for administrative expenses. Funding for this program was established by the passage of the 1992 William E. Sadowski Affordable Housing Act. Funds are allocated to local governments each month on a population-based formula. These funds are derived from the collection of documentary stamp tax revenues, which are deposited into the Local Government Housing Trust Fund. Total actual disbursements are dependent upon the appropriation of these documentary stamp collections.

COMMUNITY CONTRIBUTION TAX CREDITS

In 1980, the Florida Legislature established the Community Contribution Tax Credit Program to encourage private sector participation in revitalization and housing projects. The program offers a tax incentive (a corporate income tax credit, insurance premium tax credit or a sales tax refund) equal to 50 percent of the amount donated up to $200,000 annually to sponsors who have been approved to participate in the program. Eligible project sponsors under the program include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards. Eligible projects include the construction, improvement or rehabilitation of housing, commercial, industrial or public facilities, and projects that promote entrepreneurial or job development opportunities for low-income persons.

The Office of Tourism, Trade and Economic Development (OTTED) is responsible for administering the program by reviewing sponsor project proposals and tax credit applications. To date, 167 sponsors/projects have been approved to participate in the program. After the taxpayer receives approval for community contribution tax credits, it must claim the credit from the Department of Revenue. Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years. Unused credits against sales taxes may be carried forward for three years.

The Florida Legislature has amended the dollar cap and the expiration date of the program on numerous occasions. The program began with a $3 million per year cap that currently is designated at $12 million. The expiration of the program has been extended from 2005 to June 30, 2015. According to the OTTED, Habitat for Humanity is the primary recipient of donations for housing projects under the Community Contribution Tax Credit Program.

EFFECT OF PROPOSED CHANGES

HB 1363 addresses the issue of affordable housing in Florida by creating the Community Workforce Housing Innovation Program, and by creating law and amending existing law to provide financial and regulatory incentives for the provision of affordable housing. The bill addresses various aspects of the income spectrum from extremely-low-income persons, defined as a person or family whose total annual household income does not exceed 30 percent of the median annual adjusted gross income for households within the state, to those persons earning less than 150 percent of AMI. The effects of this bill are described in greater detail below under the headings Community Workforce Housing Innovation Program; and Other Financial and Regulatory Incentives; and Miscellaneous.

FLORIDA HOUSING FINANCE CORPORATION PROGRAMS

The bill creates the Community Workforce Housing Innovation Program (s. 420.5095, F.S.) and amends: the State Apartment Incentive Loan Program (SAIL); the Florida Homeownership Assistance Program (HAP); and the State Housing Initiatives Partnership (SHIP).

COMMUNITY WORKFORCE HOUSING INNOVATION PROGRAM (CWHIP) - The bill creates the CWHIP for the purpose of providing affordable rental and home ownership community workforce housing for essential services personnel with medium incomes in high-cost and high-growth counties. The program is designed to use regulatory incentives and state and local funds to promote local public-private partnerships and to leverage government and private sources.

Florida Housing Finance Corporation (Corporation) - The bill provides the Corporation with authority to provide CWHIP loans, subject to the availability of appropriated funds. The loans may be forgivable and are available to applicants for construction or rehabilitation of rental or home ownership workforce housing in eligible counties. The bill directs the Corporation to establish a funding process and selection criteria to distribute the annually appropriated funds which may be used with other Corporation and private-sector resources. The bill also directs the Corporation to provide incentives for local governments to use local affordable housing funds to assist in meeting the affordable housing needs of this program's eligible persons.

Definitions and funding targets: The bill requires CWHIP to target specified areas, and directly or indirectly defines several terms, including those targets, as outlined below. The bill limits funding to one project per county per year and requires that the Corporation must seek to achieve a 70 percent high-cost, 30 percent high-growth ratio in its annual project funding. However, the bill provides that when one project has been funded in each applying high-growth and high-cost county, then the Corporation may fund other eligible projects.

- "High-cost counties" is defined as those counties in which the median sales price of a single-family home using the most recent county level statistics is above the state median sales price of a single-family home; areas of critical state concern for which the Legislature has declared its intent to provide affordable housing, and areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and counties designated as rural areas of critical economic concern. The bill requires the Corporation to annually develop the list of high-cost counties.
- "Areas of critical state concern" is indirectly defined as those areas designated under s. 380.05, F.S., for which the Legislature has declared its intent to provide affordable housing.[2] One of the

[2] Established in Chapter 380.05, Florida Statutes, the Area of Critical State Concern (ACSC) program protects resources and public facilities of major statewide significance. Designated Areas of Critical State Concern are: City of Apalachicola; City of Key West; Green Swamp; Florida Keys (Monroe County); and the Big Cypress Swamp (Miami-Dade, Monroe and Collier counties). In ACSCs, Department of Community Affairs (DCA) staff review all local development projects and may appeal to the Administration Commission any local development orders that are inconsistent with state guidelines. The DCA is also responsible for reviewing and approving amendments to comprehensive plans and land development regulations proposed by local governments within the designated areas.

five designated ACSC areas appears to comply with this indirect definition: Florida Keys ACSC (s. 380.0552, F.S.).

- "High-growth counties" is defined as those counties that demonstrate significantly high rates of growth in K-12 public school students and a substantial number of open teaching positions currently and projected for the next school year. To qualify, a county's school district must have been in the top 10 school districts in the state for fastest student population growth as a percentage rate of increase for the previous 5 years, as defined by the Department of Education. Prioritized are those school districts that have the greatest number of teaching position vacancies.
- "Public-private partnerships" is defined to include substantial involvement of at least one county, municipality, or public sector entity (examples given are: school districts, special districts, and other units of local government) and at least one not-for-profit of for-profit project partner. Partnerships are encouraged to include one or more private sector business or charitable entities and may be any form of business entity, including a joint venture or contractual agreement.
- "Workforce housing" is defined as housing affordable to natural persons or families whose total annual household income does not exceed 150 percent of the AMI, adjusted for household size or a higher area median income in areas of critical state concern or in areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation.
- "Essential services personnel" is defined as persons in need of affordable housing who are employed in areas in which they are considered essential service personnel as defined in that area's local housing assistance plan as provided for in the SAIL program.
- "Innovative projects" is indirectly defined to include new construction or rehabilitation of existing housing, mixed-income housing, or commercial and housing mixed-use elements.

Targets: The bill mandates that the Corporation target the following, as defined in the bill:

- High-cost and high-growth counties; areas of critical state concern meeting specified criteria; and areas designated as an area of critical state concern for at least 20 consecutive years prior to designation.
- Public-private partnerships.
- Workforce housing.
- Essential services personnel in need of affordable housing.
- Innovative projects.

Priority Funding Consideration: The bill provides priority funding consideration to projects where the local jurisdiction has allowed workforce housing incentives to promote financial viability, successful development, and ongoing maintenance of such housing developments. Such incentives include the following as related to the provision of affordable housing:

- Expediting of the approval of development orders and development permits, as defined respectively in s. 163.3164(7) and (8), F.S.
- Reducing or wavier of, or providing an alternative method of fee payment, or impact fees.
- Increasing density levels, providing density bonuses of up to 16 units or higher per acre, except in coastal high-hazard areas.
- Reserving infrastructure capacity for affordable housing in the local comprehensive plan.
- Allowing additional affordable housing units in residential zoning districts.
- Allowing mixed land uses.
- Reducing open space, building setback requirements, road widths, parking, and other requirements not essential to protect the public health, safety and welfare, or the environment.
- Allowing zero-lot-line or other flexible lot configurations.
- Modifying or reducing traffic concurrency requirements by up to 25 percent.

Additionally, the bill requires that local transportation infrastructure funding will be considered for prioritization by metropolitan planning organizations.

The bill also requires that CWHIP regulatory incentives will be considered acceptable by local governments if either of the following is satisfied:

- The applicant receives a letter of support from the local government; or
- A vote of no objection is taken by the local governing body within 60 days of the Corporations' receipt of the application.

Grant Eligibility: The bill provides that the Corporation, subject to appropriations, has the authority to provide grants for construction or rehabilitation of rental or single-family community workforce housing, providing that the applicant meet at least one of the following criteria:

- Sets aside at least 80 percent of the units for workforce housing and sets aside at least 50 percent of the units as prioritized for essential services personnel.
- For rental projects:
  - Up to 120 percent AMI - rents for all workforce housing units serving those with incomes up to 120 percent of AMI shall be restricted at the appropriate income level using the restricted rents for the federal low-income housing tax credit program.
  - Up to 150 percent of AMI - rents for workforce housing units serving those with incomes up to 150 percent of AMI shall be restricted to those established by the Corporation, not to exceed 40 percent of the maximum household income adjusted to unit size.
- For home ownership:
  - Limits the sales price of a detached, townhome or condominium unit to not more than the median sales price for that type of unit in that county and requires that all eligible purchasers of home ownership units occupy the home as their primary residence.
- Demonstrate that the program applicant is a public-private partnership of at least one local government or special district public entity and one private not-for-profit or for-profit partner.
- Demonstrate how the applicant will use the regulatory incentives and includes any local government letters of support for the incentives outlined in newly created s. 420.9075(8)(b)1., F.S.
- Demonstrate that the applicant possesses title to or site control of land and evidences availability of required infrastructure.
- Provides supporting research or facts of rental or home ownership workforce housing demand and need.
- Have at least 15 percent, evidenced by a letter of commitment, of the total development cost provided by grants, donations of land, or contributions from other sources.
- Demonstrate accessibility to employment opportunities or a plan to provide transportation access to such opportunities.
- Demonstrate a marketing and sales plan to ensure residents fit the income requirements and program workforce demands.
- Provide a development cost pro forma for the project.
- Demonstrate the applicant's affordable housing development and management experience.
- Demonstrate the long-term affordability of the rental or homeownership units.

The bill provides that projects eligible for grants may include certain manufactured housing that includes local contributions or financial strategies.

Review Committee: The bill requires the Corporation to establish a review committee and scoring system for evaluation and competitive ranking of submitted applications. The ranking is required to ensure an opportunity for a greater number of high-cost, high-growth counties to receive project funding.

Interest Rate: The bill provides that the Corporation may award loans with a one to three percent interest rate which may be forgiven if the project continues to meet rental or ownership criteria outlined in the newly created s. 420.9075(4), F.S. The Corporation is required to develop rules and guidelines to set the terms under which the accrued loan interest may be forgiven.

Maximum Administrative Overhead: The bill authorizes the Corporation to use no more than two percent of the annual appropriation for administration and compliance monitoring.

Down Payment Assistance Program: The bill requires the Corporation to develop and implement a CWHIP down payment assistance program. There are no standards or guidelines provided to the Corporation regarding this program. Such authorization appears to be an unauthorized delegation of legislative authority in conflict with s. 1, Art. III, State Constitution. [See: CONSTITUTIONAL ISSUES].

Annual Review and Report: The bill requires the Corporation to conduct an annual review of the success of the CWHIP; and to ascertain whether the program is meeting the housing needs of high-cost and high-growth counties. Additionally, the bill requires the Corporation to review ways to improve public and private sector incentives and barriers to affordable and community workforce housing. The Corporation is required to submit any recommendations for strengthening the program to the Governor, the Speaker of the House of Representatives, and the President of the Senate within 2 months of the end of the Corporation's fiscal year. The bill authorizes the Corporation to request assistance in these matters from the Department of Community Affairs (DCA) or the Affordable Housing Study Commission[3].

State Apartment Incentive Loan Program (SAIL) – The bill amends the SAIL program as follows:

- Authorizes the Corporation to:
  - Set a SAIL loan interest rate at between one to nine percent and to set an interest rate based on the pro rata share of units set aside for homeless residents if the total of such units is less than 80 percent of the total units.
  - Make loans exceeding 25 percent of project costs when the project serves extremely-low-income persons.
  - Forgive indebtedness for a share of the loan attributable to the units in a project reserved for extremely-low-income persons.
- Changes the categories of counties within which 10 percent of program funds must be allocated during successive 3-year periods to:
  - Counties with a population of 825,000 or more (from more than 500,000).
  - Counties with a population of more than 100,000 but less than 825,000 (from between 100,000 and 500,000).
  - Counties with a population of 100,000 or less.
- Lowers the matching commitment of a sponsor of an elderly housing community to at least 5 percent (from at least 15 percent).
- Authorizes the Corporation to make the term of its encumbrance coterminous with the longest term of superior loans.
- Authorizes the Corporation to waive a requirement related to the maximum of a loan under certain conditions for projects which reserve units for extremely-low-income person.
- Amends the project ranking criteria as follows:
  - Provides an exclusion from the program ranking criteria that favors the lowest project loan/cost ratio for that share of the loan attributable to units serving extremely-low-income persons.
  - Gives ranking credit to projects that reserve units for extremely-low-income persons.
- Limits the sale, transfer, or refinancing of Corporation loans to those that are consistent with fiscal program goals and the preservation or advancement of affordable housing for the state.
- Authorizes rent controls when the sponsor has committed to set aside units for extremely-low-income persons, which rents shall be restricted at the level applicable for federal low-income tax credits.

Florida Homeownership Assistance Program (HAP) – The bill amends the HAP program as follows:

[3] The Affordable Housing Study Commission was created in 1986 pursuant to the provisions of s. 420.609, F.S. Each year the Commission makes public policy recommendations to the Governor and Legislature to stimulate community development and revitalization to promote the production, preservation, and maintenance of safe, decent affordable housing for all Floridians.

- Authorizes the Corporation to forgive the repayment of loans on the sale, transfer, refinancing, or rental of secured property.
- Authorizes the Corporation to establish subsidiary business entities, and to provide such subsidiary entities with rulemaking authority necessary to carry out the purposes of taking title to and managing and disposing of property acquired by the Corporation.
- Expands the scope of the HAP program to moderate-income persons in purchasing a primary residence.
- Authorizes the Corporation to not require the balance of loan be due at the time the property is sold, refinanced, rented, or transferred.
- Raises the income level for eligible person to 120 percent from 80 percent of the state or local median income.
- Provides that loans may not exceed the lesser of 35 percent of the purchase price of the amount necessary to enable the purchaser to meet credit underwriting criteria.
- Deletes a loan preference for community development corporations as defined in s. 290.033, F.S.
- Removes the temporal reservation of funds.

State Housing Initiatives Partnership (SHIP) - The bill amends the SHIP program as follows:

- Provides that each local housing assistance plan shall include a definition of essential service personnel for county or eligible municipality including, but not limited to, teachers and educators; other school district, community college and university employees; police and fire personnel, health care personnel, skilled building trades personnel, and other job categories.
- Encourages eligible local governments to develop a strategy within its local housing assistance plan that emphasizes recruitment and retention of essential service personnel.
- Requires local government to verify compliance with the eligibility criteria.
- Encourages eligible local governments to develop a strategy within in its local housing assistance plan that addresses the needs of persons who are deprived of affordable housing due to closure of a mobile home park or conversion of affordable rental units to condominiums.
- Provides that 65 percent of the funds of each eligible local government's local housing distribution be reserved for rehabilitation and construction of home ownership units for eligible extremely-low-income, low-income or very-low-income persons.
- Authorizes the alternative use of U.S. Department of the Treasury established standards for determining the time period for calculating the average area purchase price relative to fund awards under the program.

Additional Rulemaking Authority: The bill provides additional rulemaking authority to the Corporation to adopt rules:

- For the intervention, negotiation of terms or other actions necessary to further the goals or avoid default of a program loan.
- For the periodic reporting of data, including demographic data on all housing financed through Corporation programs and for participation in a housing locator system.
- Changes the criteria to determine the maximum funding level for the Corporation's compliance monitoring activities to one-quarter of one percent of the annual appropriation (from $200,000).

Extremely-Low-Income

The bill defines "extremely-low-income" to mean one or more natural persons or a family whose total annual household income does not exceed 30 percent of the median annual adjusted gross income for households with the state.

The bill authorizes the Corporation to adjust this amount annually by rule to provide that in lower income counties the definition may exceed 30 percent of the AMI and that in higher income counties, extremely-low-income may be less than 30 percent of AMI.

Ad Valorem Tax Incentives

Assessment of Affordable Housing Properties

Capitalization Rate: The bill requires that, if a capitalization rate is used to assess just valuation for affordable housing property, then the property appraiser must use a capitalization rate that is comparable to a rate used for non-affordable market-based properties.

"The Manny Diaz Affordable Housing Property Tax Relief initiative": The bill creates "The Manny Diaz Affordable Housing Property Tax Relief Initiative" for the purpose of assessing just valuation of certain affordable housing properties serving persons with incomes defined as low, moderate, and very low. The bill requires property appraisers, for assessment purposes, to recognize the actual rent income from rent-restricted units in such properties and to utilize an income approach for the assessment of the rents from such units. The bill specifies three types of properties to which this approach applies.

Exemptions

Affordable Housing Property Exemption for Nonprofit Entity Ownership: Current law provides a property exemption for affordable housing property owned entirely by a nonprofit entity. The bill defines the phrase "ownership by a nonprofit entity" as either:

- A corporation not for profit; or
- A Florida limited partnership the sole general partner of which is either a corporation not for profit or a Florida limited liability company the sole member of which is a corporation not for sale.

Additionally, the bill provides that in order to qualify for this exemption, the non-profit entity must affirmatively demonstrate to the property appraiser that no benefit will inure to the benefit of for profit persons or entities or for a nonexempt purpose.

Community Contribution Tax Credits

The bill increases the total amount of community contribution tax credits which may be granted all programs approved under ss. 212.08, 220.183 and 624.5105, F.S., by $1 million. It amends ss. 212.08, 220.183 and 624.5105, F.S., respectively, in a substantially identical fashion, to provide new allocations of the available $13 million in tax credits: (1) an annual allocation of $10 million of tax credits for donations made to eligible sponsors for projects that provide homeownership opportunities for extremely-low-income, low-income or very-low-income households as defined in s. 420.9071(19)[4] and (28),[5] F.S., and (2) a $3 million annual allocation for all other projects.

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[4] Section 420.9071(19), F.S., defines "low-income person" or "low-income household" to mean one or more natural persons or a family that has a total annual gross household income that does not exceed 80 percent of the median annual income adjusted for family size for households within the metropolitan statistical area, the county, or the nonmetropolitan median for the state, whichever amount is greatest. With respect to rental units, the low-income household's annual income at the time of initial occupancy may not exceed 80 percent of the area's median income adjusted for family size. While occupying the rental unit, a low-income household's annual income may increase to an amount not to exceed 140 percent of 80 percent of the area's median income adjusted for family size.

[5] Section 420.9071(28), F.S., defines "Very-low-income person" or "very-low-income household" to mean one or more natural persons or a family that has a total annual gross household income that does not exceed 50 percent of the median annual income adjusted for family size for households within the metropolitan statistical area, the county, or the nonmetropolitan median for the state, whichever is greatest. With respect to rental units, the very-low-income household's annual income at the time of initial occupancy may not exceed 50 percent of the area's median income adjusted for family size. While occupying the rental unit, a very-low-income household's annual income may increase to an amount not to exceed 140 percent of 50 percent of the area's median income adjusted for family size.

The bill also eliminates the requirement that the Office of Tourism, Trade, and Economic Development reserve specific percentages of certain annual tax credits for donations made to eligible sponsors for projects that provide homeownership opportunities for certain households and for other projects. These sections of the bill also eliminate provisions that allow tax credits that are unused for home ownership or all other projects to be used for any approved project after the first six months of the state fiscal year.

Authorizing Housing Assistance

School Boards

The bill authorizes district school boards to make certain school board lands, acquired prior to January 1, 2006, available to a private developer or nonprofit housing organization for the purpose of providing housing assistance to teachers and other instructional personnel. In order to provide this assistance, the personnel must be eligible under the provisions of ch. 420, F.S., and the school board must declare the land as surplus and not need for any facility identified in the district's facilities work program required pursuant to s. 1013.35, F.S.

Additionally, the bill authorizes school boards to provide affordable housing for teachers and other instructional personnel independently or in conjunction with other agencies as described in s. 1001.43(5), F.S.

Special Districts

The bill authorizes certain independent special districts to provide specific types of housing assistance as follows:

- Community Development Districts (CDD): The bill authorizes any CDD created pursuant to ch 190, F.S., to provide housing and housing assistance for persons whose total annual household income does not exceed 140 percent of the AMI, adjusted for family size.
- Independent Special Districts and Drainage and Water Control Districts: The bill authorizes any independent special district created pursuant to ch. 189, F.S., and drainage and water control districts created pursuant to ch. 298, F.S., to provide housing and housing assistance for its employed personnel whose total annual household income does not exceed 140 percent of the AMI, adjusted for family size.
- Independent Special fire Control Districts: The bill amends the general powers of independent special fire control districts to authorize them to provide housing and housing assistance for their employed personnel whose total annual household income does not exceed 140 percent of the AMI, adjusted for family size.

Comprehensive Planning

Small Scale Amendments

Accessory Dwelling Units: The bill adds extremely-low-income persons to the categories of uses for which existing law authorizes a local government to adopt an ordinance to allow accessory dwelling units in any area zoned for single-family residential use.

Small Scale Comprehensive Plan Amendment: Existing law provides that certain small scale development activities requiring a comprehensive plan amendment may be approved through a summary process known as a small scale amendment. The bill removes an exception from the limitation on density for property subject to:

- An extended use agreement recorded in conjunction with the issuance of tax exempt bond financing; or
- An allocation of federal tax credits issued through the Corporation, or a local housing finance authority authorized by the Division of Finance of the State Board of Administration.

Developments of Regional Impact (DRI)

Substantial Deviation Density Bonus: Existing law provides that any proposed change to an approved DRI that exceeds statutory thresholds, known as a substantial deviation, must undergo additional DRI review. The bill provides a residential density bonus to increase the density threshold by the greater of 15 percent or 100 units when 20 percent of the increase in the number of dwelling units is dedicated to the construction of workforce housing. The bill defines "workforce housing" for purposes of this provision as housing that will be made permanently affordable to a person who earns less than 140 percent of the AMI, as provided in a recorded land use restriction agreement.

Statewide Guidelines and Standards Density Bonus: Existing law provides statewide guidelines and standards for development required to undergo DRI review. The bill provides a residential density bonus where a developer demonstrates that at least 15 percent of the residential units will be dedicated to workforce housing. Specifically, the bonus provides an increase of 20 percent in the number of units. "Workforce housing" is defined as noted above.

Density Incentives for Land Donation

The bill creates new law to provide density bonus incentives for land donations for affordable housing purposes for extremely-low-income, very-low-income, low-income or moderate-income persons. A local government may provide density bonus incentives to any landowner who voluntarily donates fee simple interest in real property to the local government for affordable housing purposes. The authorized bonus may provide one to four dwelling units per gross acre of donated land. The density bonus would be applied to any land within the local government's jurisdiction as long as residential is an allowable use on the receiving land and that the overall density of the receiving land does not exceed six units per gross acre. The award of density bonus, identification of the receiving land and any other conditions are subject to local government approval. The bill also provides specific requirements in order for the density bonus to be authorized.

Surplus State and Local Government Real Property

County Property: The bill requires each county to prepare an inventory list of all real property held in fee simple by the county within its jurisdiction. The list is to be prepared by January 1, 2007, and each three years thereafter. Criteria for the list are provided. The bill requires county planning staff to review the list and to identify each property that is appropriate for use as affordable housing. A six-month period is provided for this review. Properties identified as appropriate for affordable housing shall be offered for sale with the proceeds used to purchase land for the development of affordable housing. Alternatively:

- The proceeds may be donated to the Local Government Housing Trust Fund;
- The proceeds may be donated to a nonprofit housing organization for the construction of permanent affordable housing; or
- The land may be sold with a restriction requiring development on the property to include a specified percentage of permanent affordable housing.

The bill prescribes a public hearing process and provides restrictions on the potential pool of purchasers. Further, the bill provides for certain deed restrictions to prevent the sale of the unit at a price that exceeds the affordable housing threshold for low or moderate-income persons. The bill provides for definitions consistent with those found at s. 420.0004, F.S.

Municipal Property: The bill provides similar requirements for municipalities to prepare the real property inventory; and to offer for sale properties appropriate for use as affordable housing.

State Property: The bill amends existing law related to the surplus state lands. The bill provides that a local government may request that state lands be specifically declared surplus lands for the purpose of

providing affordable housing. Additionally, the bill authorizes affordable housing as a permitted use for surplus state lands; and provides that when such lands are conveyed to local governments, they shall be disposed of consistent with the provisions outlined above.

Disabled Veterans License and Permit Fee Exemption

Section 295.16, F.S., allows veterans to be exempt from paying building license or permit fees to any county or municipality for wheelchair accessibility improvements made upon a mobile home, when certain criteria are met. The bill increases the type of residences eligible for the permit fee exemption in s. 295.16, F.S to include any dwelling they own.

This bill will enable a larger population of eligible, disabled veterans to take advantage of the existing fee exemption, reducing the costs that they are obligated to pay in order to make their homes wheelchair accessible. This bill does not place any restrictions on the number of wheelchair accessibility improvements allowed nor does it appear to place any restrictions on the number of times improvements may be made to the dwelling.

Farmworkers

The bill repeals s. 420.37, F.S., relating to additional powers of the Corporation, at the suggestion of the Corporation. The bill also repeals s. 420.530, F.S., the State Farmworker Housing Pilot Loan Program established as a pilot project by the 2000 Legislature.

Home Retrofit Hardening

The bill requires the DCA to establish the Home Retrofit Hardening Program as a competitive grant program to fund improvements to homes constructed before the implementation of the current Florida Building Code when the improvements will directly affect the ability of the home to withstand hurricane force winds and improve the home's rating for home insurance. While site-built homes and mobile homes are eligible for these funds, priority will be given to low-income homeowners who live in wind-borne debris regions as defined by the Florida Building Code.

The bill provides for this program to be implemented by local governments, regional planning councils, or private nonprofit agencies under the direction the DCA.

The bill provides program funds award guidance to the DCA and criteria for the use of the funds and directs the DCA to keep administrative costs to a minimum not to exceed five percent of the appropriation.

The bill does not require a match to receive a grant, but provides DCA may consider matching funds during the competitive review process. Each project grant for an individual home retrofit may not exceed $10,000.

Appropriations

The bill provides the following appropriations:

Rental Recovery Loan Program: The bill appropriates $176.6 million to the Corporation from the State Housing Trust Fund for the Rental Recovery Loan Program.

Communities Impacted by Hurricanes Wilma and Katrina: The bill appropriates $82.904 million from the Small Cities Community Development Block Grant Trust Fund to the DCA to be used consistent with the Federal Register 71 FR 7666, February 13, 2006, and the Action Plan for Disaster Recovery approved by the U. S. Department of Housing and Urban Development to meet the needs of

communities impacted by Hurricanes Wilma and Katrina, with a prioritization toward affordable housing in the most impacted areas of the state.

CWHIP: The bill appropriates $50 million from the Local Government Housing Trust Fund to the Corporation to fund the CWHIP program.

Home Retrofit Hardening Program: The bill appropriates $50 million from the U. S. Contributions Trust Fund to DCA in fixed capital outlay funds to fund the Home Retrofit Hardening Program.

Extremely-Low-Income Persons Housing Assistance: The bill appropriates $33 million from the Local Government Housing Trust Fund to the Corporation in nonrecurring funds for fiscal year 2006-2007 to assist in the production of housing units for extremely-low-income persons.

Farmworker Housing Recovery and the Special Housing Assistance and Development Programs: The bill appropriates $25 million from the State Housing Trust Fund to the Corporation for the Farmworker Housing Recovery and the Special Housing Assistance and Development Programs; and $400,000 for technical and training assistance.

Hurricane Housing Recovery Program: The bill appropriates $15 million from the Local Government Housing Trust Fund to the Corporation to fund the Hurricane Housing Recovery Program.

Disaster Recovery Assistance Program: The bill directs the DCA to establish the Disaster Recovery Assistance Program as a grant program to fund repair and rehabilitation to homes in communities severely impacted by the 2004 and 2005 hurricanes. The funds are to be leveraged and targeted to the most vulnerable citizens. The bill appropriates $2 million in fixed capital outlay from the State Housing Trust Fund in DCA.

C. SECTION DIRECTORY:

Section 1 – Creates s. 125.379, F.S., relating to the disposition of county property for affordable housing.

Section 2 – Amends s. 163.31771, F.S., adding a reference to definition of "extremely-low-income;" adding extremely-low-income to legislative findings and to the definition of an "affordable rental;" and conforming cross-references.

Section 3 – Amends s. 163.3187(1) (c), F.S., removing an exception from the comprehensive plan small scale amendment provisions.

Section 4 – Creates s. 166.0451, F.S., relating to the disposition of municipal property for affordable housing.

Section 5 – Creates s. 189.4155 (6), F.S., authorizing specified independent special districts to provide housing and housing assistance.

Section 6 – Creates s. 191.006 (19), F.S., amending independent special fire control district general powers to allow provision of housing and housing assistance for employed personnel.

Section 7 – Creates s. 193.017 (5). F.S., relating to capitalization rates used to assess property value.

Section 8 – Creates s. 193.018, F.S., creating "The Manny Diaz Affordable Housing Property Tax Relief Initiative"; requiring the use of an actual rental income basis for the purpose of assessing certain affordable housing properties.

Section 9 – Amends s. 196.1978, F.S., providing an affordable housing property exemption for certain affordable housing nonprofit entity owners; providing priority consideration for use of rental income

approach to assessment for certain affordable housing; requiring an affirmative demonstration to the property appraiser that no benefit will inure to the benefit of any for profit person or entity for a nonexempt purpose.

Section 10 – Amends s. 212.08(5), F.S., increasing the amount of available tax credits, providing separate annual limitations for sales tax credits, eliminating the reservation of available tax credits, including homeownership projects for extremely-low-income persons as defined in s. 420.0004(8), F.S.

Section 11 – Amends ss. 220.183(1) (c) and 220.183 (2) (b), F.S., increasing the amount of available tax credits, providing separate annual limitations for corporate tax credits, and eliminating the reservation of available tax credits including homeownership projects for extremely-low-income persons as defined in s. 420.0004(8), F.S .

Section 12 – Amends s. 253.034 (6) (f), F.S., relating to the uses of state-owned lands as surplus lands for affordable housing.

Section 13 – Amends s. 253.0341, F.S., authorizing local governments to request, under certain conditions, that state lands be specifically declared surplus lands for affordable housing purposes.

Section 14 – Amends s. 295.16, F.S., relating to license or permit fee exemptions for disabled veterans; changing language from "mobile home" to "dwelling."

Section 15 – Amends s. 380.06 (19), F.S., relating to development of regional impact substantial deviations and dwelling units used for "workforce housing;" providing a definition of "workforce housing."

Section 16 – Amends s. 380.0651 (3) (k), F.S., relating to development of regional impact statewide guidelines and standard, increasing the applicable guidelines for residential development, providing workforce housing; providing a definition of "workforce housing."

Section 17 – Amends s. 420.0004, F.S., providing a definition of "extremely low-income person" and authorizing the Florida Housing Finance Corporation to adjust low income guidelines.

Section 18 – Repeals ss. 420.37 and 420.530, F.S., relating to additional powers of the Florida Housing Finance Corporation and to the State Farmworker Housing Pilot Loan Program, respectively.

Section 19 – Amends s. 420.503 (18), F.S., amending the definition of "farmworker."

Section 20 – Amends s. 420.5061, F.S., conforming a cross-reference.

Section 21 – Amends s. 420.507 (22) (23) (40), F.S.; relating to: interest rates; the availability of subordinated loans to nonprofit sponsors or the availability for financing of housing to eligible borrowers; the adoption of rules for the intervention, negotiation or terms or other actions to support program goals or avoid default of program loan.

Section 22 – Amends ss. 420.5087 (1) (3) (5) (6), F.S., relating to state apartment incentive loans; changing county population category parameters used for the allocation of funds; providing that where the Corporation's lien is subordinate to another mortgagee, then the term of the loan may be made coterminous with longest term of the superior lien; and authorizing the Corporation to waive certain requirements for projects which reserve units for very-low-income families.

Section 23 – Amends s. 420.5088 (1) – (4), F.S., relating to Florida Homeownership Assistance Program.

Section 24 – Creates s. 420.5095, F.S., creating the Community Workforce Housing Innovation Program.

Section 25 – Amends s. 420.9071(25), F.S., conforming a cross-reference.

Section 26 – Amends s. 420.9072(2), F.S., correcting a cross-reference.

Section 27 – Amends ss. 420.9075, F.S., relating to the distribution of State Housing Initiatives Partnership funds in local housing assistance plans; creating content requirements for the local housing assistance plans; adding extremely-low-income persons and rehabilitation and construction of home ownership units to the eligibility parameters.

Section 28 – Amends s. 420.9076 (6), F.S., changing the maximum amount that the Florida Housing Finance Corporation may seek annually from the Local Government Housing Trust Fund for the purpose of compliance monitoring.

Section 29 – Amends 420.9079 (2), F.S., relating to the Local Government Housing Trust Fund; revising the amount of money a corporation may request in order to implement the provisions of s. 420.9075 (8), F.S.

Section 30 – Amends s. 624.5105 (1) (c) and (2) (e), F.S., increasing availability of community contribution tax credits, providing separate annual limitations for insurance premium tax credits, and eliminating the reservation of available tax credits including homeownership projects for extremely-low-income persons as defined in s. 420.0004(8), F.S .

Section 31 – Amends s. 1001.42 (9) (b), F.S., authorizing school boards to make certain school board lands, acquired prior to January 1, 2006, available for the purpose of providing housing assistance to teachers and other instructional personnel.

Section 32– Amends s. 1001.43 authorizing district school boards to provide affordable housing teachers and other instructional personnel.

Section 33 – Creating provisions for affordable housing land donation density incentives.

Section 34 – Providing DCA must establish the Home Retrofit Hardening Program; providing an appropriation.

Section 35 – Appropriating $2 million in fixed capital outlay from the State Housing Trust Fund and directing the DCA to establish the Disaster Recovery Assistance Program as a grant program utilizing that appropriation to fund home repairs and rehabilitation in communities severely impacted by the 2004 and 2005 hurricanes.

Section 36 – Providing appropriations for: the Rental Recovery Loan Program; the Farmworker Housing Recovery Program; the Special Housing Assistance and Development Program; the Hurricane Housing Recovery Program, and for technical and training assistance; providing authority to the Corporation to provide funds for affordable housing recovery in those areas which sustained housing damage resulting from the 2004 and 2005 hurricanes; providing for emergency rulemaking.

Section 37 – Providing an appropriation from the Small Cities Community Block Grant Trust Fund to be used in the state consistent with the Federal Register 71 FR 7666, February 13, 2006, and the HUD Action Plan for Disaster Recovery related to impacts of Hurricanes Wilma and Katrina.

Section 38 – Providing an appropriation to the Corporation from the Local Government Housing Trust Fund to implement the CWHIP.

Section 39 – Providing an appropriation from the Local Government Housing Trust Fund to assist in the production of housing units for extremely-low-income persons.

Section 40 – Providing an effective date of July 1, 2006, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Community Contribution Tax Credits: The Revenue Estimating Conference has determined that increasing the amount of community contribution tax credits annually from $12 million to $13 million will result in a loss of $.9 million in state revenues during fiscal year 2006-2007 and fiscal year 2007-2006.

	FY 2006-07	FY 2007-2008
General Revenue		
Corporate	(.1)	(.1)
Sales	(.8)	(.8)
State Trust	(Indeterminate)	(Indeterminate)
Total State Impact	(.9)	(.9)

2. Expenditures:

The bill appropriates:

- $50 million to the DCA from the U.S. Contributions Trust Fund for the Home Retrofit Hardening Program;
- $2 million in fixed capital outlay from the State Housing Trust Fund for the Disaster Recovery Assistance Program;
- $15 million from the Local Government Housing Trust Fund to the Florida Housing Finance Corporation to provide funds to eligible entities for affordable housing recovery from the 2004 and 2005 hurricanes;
- $25 million from the State Housing Trust Fund to the Corporation for the Farmworker Housing Recovery and Special Assistance and Development Programs;
- $400,000 from the State Housing Trust Fund for technical and training assistance;
- $176 million from the State Housing Trust Fund for the Rental Recovery Loan Program;
- $82,904,000 from the Florida Small Cities Community Development Block Grant Program Fund for affordable housing hurricane recovery;
- $50 million from the Local Government Housing Trust Fund to implement the Community Workforce Housing Innovation Program; and
- $33 million from the Local Government Housing Trust Fund for housing for extremely low income persons.

Community Contribution Tax Credits: It is anticipated that administration of the increase in tax credits by OTTED will be implemented within existing appropriations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Community Contribution Tax Credits: The Revenue Estimating Conference has determined that increasing the amount of community contribution tax credits annually from $12 million to $13 million will result in a loss of $ .1 million in local revenues during fiscal year 2006-2007 and fiscal year 2007-2006.

Disabled Veterans License and Permit Fee Exemption: The fiscal impact on local government revenues is expected to be insignificant. The Revenue Estimating Conference has not met on this issue.

2. Expenditures:

Indeterminate. The bill provides encouragement and opportunity for local government to support the affordable housing efforts advanced by this bill, but does not require any particular level of financial commitment.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Community Contribution Tax Credits: The bill increases the amount of tax credits available to persons for homeownership projects from $9.4 million to $10 million, and for non-housing projects from $2.6 million to $3 million. This may have a positive but indeterminate impact on the number of low-income homes that are built each year and the projects sponsored in enterprise zones and Front Porch Florida Communities as they are likely to receive more contributions.

Elderly Housing Community Loan Program: This bill may have an economic impact on a private sector apartment owner that qualifies under the EHCL Program by reducing the match amount required to qualify for a loan under the program, allowing them to take advantage of higher loan amounts.

The bill may have a beneficial impact on the private sector in the following manner:

- Provides incentives for the private sector development and provision of affordable housing.
- Provides housing opportunities for certain types of employees, thus supporting some private and public employers by authorizing means by which they may assist employees to secure affordable housing.

D. FISCAL COMMENTS:

Community Contribution Tax Credits: The table below shows the tax credits granted for housing projects and for other community development projects during the past 10 years. There were significant tax credits unused for the first two years after the cap was increased to $10 million. Subsequently, the entire allocation has been used.

COMMUNITY CONTRIBUTION TAX CREDIT PROGRAM
TAX CREDIT SUMMARY FY 1995/96 – FY 2005/06

FISCAL YEAR	APPROVED apps.	HOUSING TAX CREDITS	COMMUNITY DEVELOPMENT TAX CREDITS	TOTAL CREDITS APPROVED	CREDITS REMAINING	ANNUAL ALLOCATION
1995/96	75	$465,542	$1,472,255	$1,937,797	$62,203	$2,000,000
1996/97	69	$1,043,256	$1,018,947	$2,062,203	$-62,203	$2,000,000
1997/98	81	$1,348,500	$651,500	$2,000,000	$0	$2,000,000
1998/99	75	$2,720,441	$2,279,559	$5,000,000	$0	$5,000,000
1999/00	198	$3,764,283	$1,302,178	$5,066,461	$4,933,539	$10,000,000
2000/01	223	$5,320,890	$744,365	$6,065,255	$3,934,745	$10,000,000
2001/02	322	$9,484,489	$515,464	$9,999,953	$47	$10,000,000

2002/03	359	$8,914,456	$1,085,544	$10,000,000	$0	$10,000,000
2003/04	285	$8,622,769	$1,377,231	$10,000,000	$0	$10,000,000
2004/05	251	$8,051,618	$1,948,382	$10,000,000	$0	$10,000,000
2005/06	285	$9,558,883	$2,441,117	$12,000,000	$0	$12,000,000
10 YEAR TOTALS	**2,223**	**$59,295,127**	**$14,836,542**	**$74,131,669**	**$8,868,331**	**$83,000,000**

Source: Created from data provided by OTTED.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Community Contribution Tax Credits: This bill may reduce the authority of municipalities and counties to raise revenues: the estimated reduction in Local Option Sales tax is $.1 million in fiscal year 2006–2007 and fiscal year 2007-2008. However, this impact is considered to be insignificant, and the bill is therefore exempt from the provisions of s. 18(b) of Art. VII, State Constitution.

Disabled Veterans License and Permit Fee Exemption: The mandates provision appears to apply because this bill reduces revenue raising authority; however, an exemption applies. The number of applicable veterans likely to utilize the license and permit fee exemptions is expected to be minimal. Therefore, the fiscal impact is expected to be insignificant and the bill is exempt from the mandates provision.

Surplus Property Inventory: The mandates provision appears to apply because this bill requires counties and municipalities to conduct a surplus real property inventory and to determine what of that real property is appropriate for affordable housing purposes. Conducting such surveys and determining what real property is appropriate for affordable housing purposes will require the expenditure of funds. However, the bill may be exempt from the mandate requirements if the fiscal impact of the bill, on an aggregate basis for all cities and counties in the state, is less than $1.8 million over the long term. At this time, the fiscal impact of the bill is unknown.

If the bill is not exempt from the mandates requirements imposed by Art. VII, section 18 of the Florida Constitution, the Legislature must determine that the law fulfills an important state interest and the bill must be approved by two–thirds of the House and Senate membership.

2. Other:

Unauthorized Delegation of Legislative Authority: Section 24 of the bill creates s. 420.5095(10), F.S., requiring the Corporation to develop and implement a down payment assistance program without any standards or guidance regarding that program.

The legislative power of the state is vested in the Legislature (s. 1, Art. III, State Constitution). It is fundamental that the Legislature may not, except when authorized by constitution, delegate its legislative power, that is, the power to enact laws, or to declare what the law shall be, or to exercise an unrestricted discretion in applying the law. Under the doctrine of nondelegation of legislative power, fundamental and primary policy decisions shall be made by members of the legislature who are elected to perform those tasks, and administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the

program.[6] The authorization to develop and implement a program with no further standards or guidance may be considered by a court to be an unauthorized delegation of legislative authority.

B. RULE-MAKING AUTHORITY:

The bill contains specific rulemaking authority as follows:

- Whereby the Corporation may intervene, negotiate terms, or undertake other actions to further program goals or avoid default of a program loan [s. 420.507(44), F.S.].
- To establish requirements for periodic reporting of data [s. 420.507(45), F.S.].
- To establish a funding process and selection criteria relating to the CWHIP [s. 420.5095(2), F.S.].
- To set the terms under which the CWHIP loan accrued interest may be forgiven [s. 420.9075(10)(b), F.S.].
- For Corporation subsidiaries as is necessary to conduct business and carry out the purposes of s. 420.507(40), F.S.
- Emergency rulemaking related to hurricane emergencies addressed in s. 37 of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- The bill requires the Corporation to develop and implement a CWHIP down payment assistance program, but provides no direction or guidance to the Corporation regarding the program. Such a grant of authority may be an unauthorized delegation of legislative authority. [See: CONSTITUTIONAL ISSUES].

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 21, 2006, the Growth Management Committee adopted a strike all amendment with two amendments. The strike all amendment substantially amended the originally filed bill to include the following:

- Authorizes the disposition of county property for affordable housing.
- Provides a density bonus in both the development of regional impact substantial deviation and statewide guidelines and standards provisions.
- Authorizes the disposition of municipal property for affordable housing.
- Authorizes independent special districts to provide housing and housing assistance for its employed personnel.
- Includes authority to provide housing and housing assistance for employed personnel to the general powers of independent special districts.
- Requires the use of a particular cap rates when a cap rate is used to assess the just valuation of affordable housing property.
- Defines classifications for the ownership of nonprofit entities.
- Creates "The Manny Diaz Affordable Housing Property Tax Relief Initiative."
- Removes the cap on the distribution of certain revenues into the State Housing Trust Fund.
- Increases the availability of community contribution tax credits; provides separate annual limitations for insurance premium tax credits, and eliminates the reservation of available tax credits.
- Authorizes the use of state-owned surplus lands for affordable housing.
- Creates a disabled veterans exemption from certain license and permits fees
- Creates an incentive to provide workforce housing within developments of regional impact.
- Increases the applicable statewide development of regional impact guidelines for residential development that include workforce housing.
- Authorizes the Florida Housing Finance Corporation to adjust low income guidelines; provides definitions.
- Repeals s. 420.37, F.S.
- Expands the definition of "farmworker" in s. 420.503 (18), F.S., to comply with an applicable Federal definition.
- Amends the powers of the Florida Housing Finance Corporation.

[6] 10A Fla. Jur. 2d Constitutional Law s. 202.

- Increases the applicable population criteria for funding eligibility; lowers the sponsor match related to funding for certain repairs or improvements; and allows for coterminous loan terms under certain circumstances; all related to the State Apartment Incentive Loan Program.
- Amends provisions relating to the Florida Homeownership Assistance Program.
- Creates the Community Workforce Housing Innovation Program.
- Amends provisions of the State Housing Initiatives Partnership Program including creating rulemaking authority.
- Changes the maximum amount that the Florida Housing Finance Corporation may seek annually from the Local Government Housing Trust Fund for the purpose of compliance monitoring.
- Amends provisions relating to the community contribution tax credit.
- Authorizes school boards to provide affordable housing for teachers and other instructional personnel.
- Creates and appropriation of $20 million from the State Housing Trust Fund to the Florida Housing Finance Corporation to provide funding to teachers eligible for affordable housing.
- Authorizes the Florida Housing Finance Corporation to adopt rules to implement the provisions of the bill.

The Growth Management Committee took up and acted upon the following amendments:
- Amendment 1 – Withdrawn.
- Amendment 2 – Created s. 196.1980, F.S., "The Manny Diaz Affordable Housing Property Relief Initiative."
- Amendment 3 – Created paragraph (i) of subsection (11) of s. 420.5095, F.S., the Community Workforce Housing Innovation Program.

On March 29, 2006, the Local Government Council adopted a strike all amendment to HB 1363 CS. The strike all amendment changed the bill in the following respects:

- Changes the reference to the recipient trust fund for donations resulting from county and municipal sales of surplus lands as provided for in amended ss. 125.379 and 163.3187, F.S.
- Added "extremely-low-income persons" to the allowable classes of persons to whom a unit may be rented pursuant to newly created s. 125.379(4), F.S.
- Section 193.017, F.S., is substantially rewritten.
- Changes the placement of the creation of "The Manny Diaz Affordable Housing Property Tax Relief Act" to s. 193.081, F.S. , from s. 196.1980, F.S. Changes the name of the act to "The Manny Diaz Affordable Housing Property Tax *Assessment* Initiative." Changes the language to provide for a *rental* income approach; specifies that the rental income approach shall be determined pursuant to s. 193.077(7), F.S.; and provides that such approach relates to certain *affordable housing* properties. Adds s. 193.018(4), F.S., to the newly created section to provide that specified affordable housing shall be assessed with priority consideration given to the rental income approach, and applying certain assumptions.
- Amends s. 196.1978(3), F.S., to provide that property *owned by a non-profit entity* shall comply with referenced criteria for the determination of an affordable housing property exemption status.
- Deleted the phrase "subject to a recorded land use restriction agreement" at the end of the first sentence of newly added s. 380.06(19)(b)10., F.S. Also, changes the definition of "workforce housing" as it applies to the subparagraph relating to DRI substantial deviations by increasing the percentage to 150 percent from 120 percent.
- Changed the percentage to 150 percent from 120 percent relating to the newly created workforce housing bonus in the DRI threshold of s. 380.0651(3)(k), F.S.
- Hyphenated the term "extremely-low-income" in the new definition of s. 420.0004(8), F.S.
- Added the phrase "and for participation in a housing locator system" to the end of the newly created s. 420.507(45), F.S
- Replaced the term "extremely-low-income" for "families" in s. 420.5087(5), F.S.
- Removed the deletion of and substantially rewrote s. 420.5087(6)(c)6., F.S., relating to SAIL loans; also removed renumbering of subsequent subparagraphs.
- Replaces the term "extremely-low-income persons" for "units" in the new language of s. 420.5087(6)(c)7., F.S.
- Amends s. 420.5087(6)(k), F.S., to add an additional condition to the allowance of rent controls on certain projects.

- Adds "rented" to the list of events giving rise to the balance due of any HAP loan, unless otherwise approved by the Corporation in s. 420.5088, F.S.
- Substantially rewrites the newly created s. 420.5095, F.S., relating to the newly created CWHIP, to remove redundancies and to provide clarifications.
- Creates s. 420.9075(3), F.S., providing for local housing assistance plans to include a definition of essential service personnel to identify those personnel that will be eligible for certain essential service personnel housing assistance.
- Clarifies that the reservation of funds for home ownership for very low income persons is a goal and not a requirement in s. 420.9075(4)(a), F.S.; and deletes the newly created subsection (5) relating to the recruitment and retention of essential service personnel.
- Adds the amendment of s. 1013.01(6), F.S., to expand the definition of "educational facilities" to include affordable and workforce housing for teacher and school personnel, if approved by the board.
- Removes the additional rulemaking authority which appeared to duplicate the Corporation's existing rulemaking authority.
- Creates s. 1013.15(5), F.S., authorizing school boards to rent or lease existing buildings, land, or space within buildings, originally constructed for purposes other than education, for conversion to use as affordable and workforce housing for school and instructional personnel.

On April 17, 2006, the Fiscal Council adopted a strike-all amendment to HB 1363 w/CS from the Local Government Council. The amendment:

- Defines "extremely-low-income" in s. 420.0004(8), F.S., and inserts the term throughout many of the programs and provisions in the bill to extend existing and created programs and authorities to reflect consideration of the housing needs for individuals in that income category.
- Substantially rewrites the newly created provisions authorizing independent special districts to provide varying degrees of housing assistance in ss. 5 and 6 of the bill.
- Adds a Federal Register citation to "the Manny Diaz Affordable Housing Property Tax Relief Initiative, s. 8 of the bill [See s. 193.018(1)(b), F.S.]; and a deed restriction requirement [See s. 193.018(1)(c), F.S.].
- Adds a qualifying requirement for an affordable housing property exemption [See s. 9 of the bill, s. 196.1978(3), F.S.].
- Moves language relating to local governments requests to surplus state lands for affordable housing purposes [See ss. 12 and 13 of the bill, ss. 253.034(6)(f)1. and 253.0341(3), F.S.
- Adds a qualification to the substantial deviation density bonus for the provision of workforce housing [See s. 15 of the bill, s. 380.06(19)(b)10., F.S.].
- Adds the same qualification to the statewide guidelines and standards for DRIs [See s. 16 of the bill, s. 380.0651, F.S.].
- Repeals s. 420.530, F.S., the State Farmworker Housing Pilot Loan Program [See s. 18 of the bill].
- Returns the maximum interest rate to nine percent authorized to be charged for SAIL loans [See. s. 21, s. 420.507, F.S.].
- Deletes emergency rulemaking authority for disaster recovery and reconstruction [See s. 21 of the bill, s. 420.507(46), F.S.].
- Adds language authorizing extended lien terms where the Corporation's lien is subordinate to liens of longer duration [See s. 22 of the bill, s. 4205087(6)(g), F.S.].
- In the CWHIP: adds counties designated as rural areas of critical economic concern to the definition of "high-cost counties"; expands the definition of "public-private partnerships;" rewrites the definition of "essential services personnel" with the same basic meaning; reformats several provisions into s. 420.5095(5), F.S.; changes the impact fee reduction incentive to remove the 50 percent reduction criteria; adds mixed land uses to the incentives; adds manufactured housing project under certain conditions as eligible CWHIP project; and extends the authorized loan interest rate to one to three percent [See bill s. 24, s. 420.5095, F.S.].
- Adds "other school district, community college and university employees" to the list of possible categories for the definition of essential service personnel in local housing assistance plans [s. 420.9075(3)(a), F.S.]; adds language encouraging eligible local governments to develop a local housing assistance plan strategy to address the needs of person deprived of affordable housing due to closure of a mobile home park or conversion of affordable rental units to condominiums [s. 420.9075, (c), F.S.]; adds rehabilitation and

construction of home ownership units to the funds reservation for certain income categories [See s. 27 of the bill, s. 420.9075(5)(a), F.S.].

- Provides authority to make certain school board lands available to certain developers or organizations for the purpose of providing affordable housing to teachers and other instruction personnel [See s. 31 of the bill, s. 1001.42(9)(b)9., F.S.].
- Adds affordable housing land donation density bonus incentives [See s. 33 of the bill].
- Adds the Home Retrofit Hardening Program [See s. 34 of the bill].
- Appropriates the following: $50 for the Home Retrofit Hardening Program; $2 million in fixed capital outlay for the Disaster Recovery Assistance Program; $15 million to provide funds to eligible entities for affordable housing recovery from the 2004 and 2005 hurricanes; $25 million for the Farmworker Housing Recovery and Special Assistance and Development Programs; $400,000 for technical and training assistance; $176 million for the Rental Recovery Loan Program; $82,904,000 for affordable housing hurricane recovery; $50 million to implement the Community Workforce Housing Innovation Program; $33 million for housing for extremely low income persons.

CHAMBER ACTION

The Fiscal Council recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to affordable housing; creating s. 125.379, F.S.; providing for disposition of county property for affordable housing; amending s. 163.31771, F.S., relating to accessory dwelling units; revising legislative findings and definitions; conforming cross-references; amending s. 163.3187, F.S.; revising a limitation relating to small scale comprehensive plan amendments involving the construction of affordable housing units; creating s. 166.0451, F.S.; providing for disposition of municipal property for affordable housing; amending s. 189.4155, F.S.; authorizing independent special districts to provide for housing and housing assistance; amending s. 191.006, F.S.; authorizing independent special fire control districts to provide employee housing and housing assistance; amending s. 193.017, F.S.; authorizing the Florida Housing Finance Corporation and the Department of Revenue to annually set the capitalization rate used for assessing just valuation

of affordable housing properties; creating s. 193.018, F.S.; creating the Manny Diaz Affordable Housing Property Tax Relief Initiative; providing criteria for assessing just valuation of affordable housing properties serving persons of low, moderate, very low, and extremely low incomes; amending s. 196.1978, F.S.; specifying what constitutes a nonprofit entity for purposes of affordable housing property tax exemption; conforming cross-references; amending ss. 212.08, 220.183, and 624.5105, F.S.; increasing the amount of available tax credits against the sales tax, corporate income tax, and insurance premium tax, respectively, for projects under the community contribution tax credit program and providing separate annual limitations for certain projects; revising requirements and procedures for the Office of Tourism, Trade, and Economic Development in granting tax credits under the program; including extremely-low-income persons as eligible recipients of assistance; conforming cross-references; amending s. 253.034, F.S.; providing for the disposition of state lands for affordable housing; amending s. 253.0341, F.S.; authorizing local governments to request state lands be declared surplus for the purpose of affordable housing; providing for use of lands that are declared surplus; amending s. 295.16, F.S.; expanding the disabled veteran exemption from certain license and permit fees relating to dwelling improvements; amending s. 380.06, F.S.; providing a greater substantial deviation threshold for the provision of affordable housing in a

development of regional impact; conforming cross-references; amending s. 380.0651, F.S.; providing a statewide guidelines and standards bonus for the provision of workforce housing; amending s. 420.0004, F.S.; defining the term "extremely-low-income persons"; conforming cross-references; repealing s. 420.37, F.S., relating to additional powers of the Florida Housing Finance Corporation; repealing s. 420.530, F.S., relating to the State Farm Worker Housing Pilot Loan Program; amending s. 420.503, F.S.; revising the definition of the term "farmworker" under the Florida Housing Finance Corporation Act; providing rulemaking authority; amending s. 420.5061, F.S.; conforming a cross-reference; amending s. 420.507, F.S.; revising and expanding the powers of the Florida Housing Finance Corporation relating to mortgage loan interest rates, loans, loan relief, uses of loan funds, subsidiary business entities, and data reporting; providing rulemaking authority; amending s. 420.5087, F.S.; increasing the population criteria for the State Apartment Incentive Loan Program; revising criteria for loans; conforming cross-references; amending s. 420.5088, F.S.; expanding the scope of the Florida Homeownership Assistance Program; revising loan requirements; deleting a provision reserving program funds for certain borrowers; creating s. 420.5095, F.S.; creating the Community Workforce Housing Innovation Program; providing the Florida Housing Finance Corporation with certain powers and responsibilities relating to the program; requiring

the program to target certain entities; providing application requirements; providing incentives for program applicants; amending s. 420.9071, F.S.; conforming a cross-reference; amending s. 420.9072, F.S.; conforming cross-references; amending s. 420.9075, F.S.; requiring local housing assistance plans to define essential service personnel for the county or eligible municipality and to contain a strategy for the recruitment and retention of such personnel; providing for provision of funds for homeownership for extremely-low-income, very-low-income, or low-income persons; amending s. 420.9076, F.S.; conforming a cross-reference; amending s. 420.9079, F.S.; revising the maximum appropriation the Florida Housing Finance Corporation may request each state fiscal year; conforming a cross-reference; amending s. 1001.42, F.S.; authorizing school districts to make specified lands available for affordable housing for teachers and other instructional personnel; amending s. 1001.43, F.S.; authorizing district school boards to provide affordable housing for teachers and other instructional personnel; authorizing local governments to provide density bonus incentives to landowners who donate fee simple interest in real property to the local government for the purpose of assisting the local government in providing affordable housing; providing definitions and requirements governing such donations and density bonuses; requiring the Department of Community Affairs to establish a Home Retrofit Hardening Program and establishing requirements

for the program; requiring the Department of Community Affairs to establish a Disaster Recovery Assistance Program and establishing requirements for the program; authorizing the Florida Housing Finance Corporation to provide funds to eligible entities for affordable housing recovery in areas of the state sustaining hurricane damage due to hurricanes during 2004 and 2005; providing legislative findings and emergency rulemaking authority; providing appropriations; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 125.379, Florida Statutes, is created to read:

125.379 Disposition of county property for affordable housing.--

(1) By January 1, 2007, and every 3 years thereafter, each county shall prepare an inventory list of all real property within its jurisdiction to which the county holds fee simple title. The inventory list must include the address and legal description of each real property and specify whether the property is vacant or improved. County planning staff shall review the inventory list and identify each property that is appropriate for use as affordable housing. The time for preparing the inventory list and its review by county planning staff may not exceed 6 months. The properties identified as appropriate for use as affordable housing may be offered for sale and the proceeds used to purchase land for the development

of affordable housing or donated to the local housing assistance trust fund, sold with a restriction that requires any development on the property to include a specified percentage of permanent affordable housing, or donated to a nonprofit housing organization for the construction of permanent affordable housing.

(2) After completing an inventory list, the board of county commissioners shall hold at least two public hearings to discuss the inventory list and staff's recommendation concerning which properties are appropriate for use as affordable housing. The board shall comply with the provisions of s. 125.66(4)(b)1. regarding the advertisement of the public hearings and shall hold the first hearing no later than 30 days after completing the inventory list. The board shall approve the inventory list through the adoption of a resolution at the second hearing no later than 6 months after completing the inventory list.

(3) After the inventory list has been approved by resolution, the board of county commissioners shall immediately make available any real property that has been identified in the inventory list as appropriate for use as affordable housing. The county shall make the surplus real property available to:

(a) A private developer if the purchase price paid by the developer is not less than the appraised value of the property based on its highest and best use and the real property is sold with deed restrictions that require a specified percentage of any project developed on the real property to provide affordable housing for low-income and moderate-income persons, with a minimum of 10 percent of the units in the project available for

low-income persons and another 10 percent of the units available for moderate-income persons for a total minimum of 20 percent, or, if providing rental housing or a combination of rental housing and homeownership, an additional 5 percent of the units available for very-low-income persons for a total minimum of 25 percent;

(b) A private developer without any requirement that a percentage of the units built on the real property be affordable if the purchase price paid by the developer is not less than the appraised value of the property based on its highest and best use, in which case the county must use the funds received from the developer to acquire real property on which affordable housing will be built or donate the funds to the local housing assistance trust fund for the purpose of implementing the programs described in ss. 420.907-420.9079; or

(c) A nonprofit housing organization, such as a community land trust, housing authority, or community redevelopment agency to be used for the production and preservation of permanent affordable housing.

(4) The deed restrictions required under paragraph (3)(a) for an affordable housing unit must also prohibit the sale of the unit at a price that exceeds the threshold for housing that is affordable for low-income or moderate-income persons or to a buyer who is not eligible due to his or her income under chapter 420. The deed restrictions may allow the affordable housing units created under paragraph (3)(a) to be rented to extremely low-income, very-low-income, low-income, or moderate-income persons.

(5) For purposes of this section, the terms "affordable," "low-income persons," "moderate-income persons," "very-low-income persons", and "extremely low-income persons" have the same meaning as in s. 420.0004.

Section 2. Subsection (1) and paragraphs (b), (d), (e), and (f) of subsection (2) of section 163.31771, Florida Statutes, are amended, and paragraph (g) is added to subsection (2) of that section, to read:

163.31771 Accessory dwelling units.--

(1) The Legislature finds that the median price of homes in this state has increased steadily over the last decade and at a greater rate of increase than the median income in many urban areas. The Legislature finds that the cost of rental housing has also increased steadily and the cost often exceeds an amount that is affordable to extremely-low-income, very-low-income, low-income, or moderate-income persons and has resulted in a critical shortage of affordable rentals in many urban areas in the state. This shortage of affordable rentals constitutes a threat to the health, safety, and welfare of the residents of the state. Therefore, the Legislature finds that it serves an important public purpose to encourage the permitting of accessory dwelling units in single-family residential areas in order to increase the availability of affordable rentals for extremely-low-income, very-low-income, low-income, or moderate-income persons.

(2) As used in this section, the term:

(b) "Affordable rental" means that monthly rent and utilities do not exceed 30 percent of that amount which

represents the percentage of the median adjusted gross annual income for extremely-low-income, very-low-income, low-income, or moderate-income persons.

(d) "Low-income persons" has the same meaning as in s. 420.0004(10) ~~(9)~~.

(e) "Moderate-income persons" has the same meaning as in s. 420.0004(11) ~~(10)~~.

(f) "Very-low-income persons" has the same meaning as in s. 420.0004(15) ~~(14)~~.

(g) "Extremely-low-income persons" has the same meaning as in s. 420.0004(8).

Section 3. Paragraph (c) of subsection (1) of section 163.3187, Florida Statutes, is amended to read:

163.3187 Amendment of adopted comprehensive plan.--

(1) Amendments to comprehensive plans adopted pursuant to this part may be made not more than two times during any calendar year, except:

(c) Any local government comprehensive plan amendments directly related to proposed small scale development activities may be approved without regard to statutory limits on the frequency of consideration of amendments to the local comprehensive plan. A small scale development amendment may be adopted only under the following conditions:

1. The proposed amendment involves a use of 10 acres or fewer and:

a. The cumulative annual effect of the acreage for all small scale development amendments adopted by the local government shall not exceed:

(I) A maximum of 120 acres in a local government that contains areas specifically designated in the local comprehensive plan for urban infill, urban redevelopment, or downtown revitalization as defined in s. 163.3164, urban infill and redevelopment areas designated under s. 163.2517, transportation concurrency exception areas approved pursuant to s. 163.3180(5), or regional activity centers and urban central business districts approved pursuant to s. 380.06(2)(e); however, amendments under this paragraph may be applied to no more than 60 acres annually of property outside the designated areas listed in this sub-sub-subparagraph. Amendments adopted pursuant to paragraph (k) shall not be counted toward the acreage limitations for small scale amendments under this paragraph.

(II) A maximum of 80 acres in a local government that does not contain any of the designated areas set forth in sub-sub-subparagraph (I).

(III) A maximum of 120 acres in a county established pursuant to s. 9, Art. VIII of the State Constitution.

b. The proposed amendment does not involve the same property granted a change within the prior 12 months.

c. The proposed amendment does not involve the same owner's property within 200 feet of property granted a change within the prior 12 months.

d. The proposed amendment does not involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, but only proposes a land use change to the

future land use map for a site-specific small scale development activity.

e. The property that is the subject of the proposed amendment is not located within an area of critical state concern, unless the project subject to the proposed amendment involves the construction of affordable housing units meeting the criteria of s. 420.0004(3), and is located within an area of critical state concern designated by s. 380.0552 or by the Administration Commission pursuant to s. 380.05(1). Such amendment is not subject to the density limitations of sub-subparagraph f., and shall be reviewed by the state land planning agency for consistency with the principles for guiding development applicable to the area of critical state concern where the amendment is located and shall not become effective until a final order is issued under s. 380.05(6).

f. If the proposed amendment involves a residential land use, the residential land use has a density of 10 units or less per acre or the proposed future land use category allows a maximum residential density of the same or less than the maximum residential density allowable under the existing future land use category, except that this limitation does not apply to small scale amendments involving the construction of affordable housing units meeting the criteria of s. 420.0004(3) on property which will be the subject of a land use restriction agreement ~~or extended use agreement recorded in conjunction with the issuance of tax exempt bond financing or an allocation of federal tax credits issued through the Florida Housing Finance Corporation or a local housing finance authority authorized by the Division~~

~~of Bond Finance of the State Board of Administration~~, or small scale amendments described in sub-sub-subparagraph a.(I) that are designated in the local comprehensive plan for urban infill, urban redevelopment, or downtown revitalization as defined in s. 163.3164, urban infill and redevelopment areas designated under s. 163.2517, transportation concurrency exception areas approved pursuant to s. 163.3180(5), or regional activity centers and urban central business districts approved pursuant to s. 380.06(2)(e).

2.a. A local government that proposes to consider a plan amendment pursuant to this paragraph is not required to comply with the procedures and public notice requirements of s. 163.3184(15)(c) for such plan amendments if the local government complies with the provisions in s. 125.66(4)(a) for a county or in s. 166.041(3)(c) for a municipality. If a request for a plan amendment under this paragraph is initiated by other than the local government, public notice is required.

b. The local government shall send copies of the notice and amendment to the state land planning agency, the regional planning council, and any other person or entity requesting a copy. This information shall also include a statement identifying any property subject to the amendment that is located within a coastal high-hazard area as identified in the local comprehensive plan.

3. Small scale development amendments adopted pursuant to this paragraph require only one public hearing before the governing board, which shall be an adoption hearing as described in s. 163.3184(7), and are not subject to the requirements of s.

163.3184(3)-(6) unless the local government elects to have them subject to those requirements.

4. If the small scale development amendment involves a site within an area that is designated by the Governor as a rural area of critical economic concern under s. 288.0656(7) for the duration of such designation, the 10-acre limit listed in subparagraph 1. shall be increased by 100 percent to 20 acres. The local government approving the small scale plan amendment shall certify to the Office of Tourism, Trade, and Economic Development that the plan amendment furthers the economic objectives set forth in the executive order issued under s. 288.0656(7), and the property subject to the plan amendment shall undergo public review to ensure that all concurrency requirements and federal, state, and local environmental permit requirements are met.

Section 4. Section 166.0451, Florida Statutes, is created to read:

166.0451 Disposition of municipal property for affordable housing.--

(1) By January 1, 2007, and every 3 years thereafter, each municipality shall prepare an inventory list of all real property within its jurisdiction to which the municipality holds fee simple title. The inventory list must include the address and legal description of each property and specify whether the property is vacant or improved. Municipal planning staff shall review the inventory list and identify each real property that is appropriate for use as affordable housing. The time for preparing the inventory list and its review by municipal

planning staff may not exceed 6 months. The properties identified as appropriate for use as affordable housing may be offered for sale and the proceeds used to purchase land for the development of affordable housing or donated to the local housing assistance trust fund, sold with a restriction that requires any development on the property to include a specified percentage of permanent affordable housing, or donated to a nonprofit housing organization for the construction of permanent affordable housing.

(2) Upon completing an inventory list in compliance with this section, the governing body of the municipality shall hold at least two public hearings to discuss the inventory list and the recommendation of the staff concerning which properties are appropriate for use as affordable housing. The governing body shall comply with s. 166.041(3)(c)2.a. regarding the advertisement of the public hearings and shall hold the first hearing no later than 30 days after completing the inventory list. The governing body shall approve the inventory list through the adoption of a resolution at the second hearing no later than 6 months after completing the inventory list.

(3) After the inventory list has been approved by resolution, the governing body of the municipality shall immediately make available any real property that has been identified in the inventory list as appropriate for use as affordable housing. The municipality shall make the surplus real property available to:

(a) A private developer if the purchase price paid by the developer is not less than the appraised value of the property

based on its highest and best use and the real property is sold with deed restrictions that require a specified percentage of any project developed on the real property to provide affordable housing for low-income and moderate-income persons, with a minimum of 10 percent of the units in the project available for low-income persons and another 10 percent of the units available for moderate-income persons for a total minimum of 20 percent, or, if providing rental housing or a combination of rental housing and homeownership, an additional 5 percent of the units available for very-low-income persons for a total minimum of 25 percent;

(b) A private developer without any requirement that a percentage of the units built on the real property be affordable if the purchase price paid by the developer is not less than the appraised value of the property based on its highest and best use, in which case the municipality must use the funds received from the developer to acquire real property on which affordable housing will be built or donate the funds to the local housing trust fund for the purpose of implementing the programs described in ss. 420.907-420.9079; or

(c) A nonprofit housing organization, such as a community land trust, housing authority, or community land trust, housing authority, or community redevelopment agency to be used for the production and preservation of permanently affordable housing.

(4) The deed restrictions required under paragraph (3)(a) for an affordable housing unit must also prohibit the sale of the unit at a price that exceeds the threshold for housing that is affordable for low-income or moderate-income persons or to a

buyer who is not eligible due to his or her income under chapter 420. The deed restrictions may allow the affordable housing units created under paragraph (3)(a) to be rented to extremely-low-income, very-low-income, low-income, or moderate-income persons.

(5) For purposes of this section, the terms "affordable," "extremely-low-income persons," "low-income persons," "moderate-income persons," and "very-low-income persons" have the same meaning as in s. 420.0004.

Section 5. Subsections (6) and (7) are added to section 189.4155, Florida Statutes, to read:

189.4155 Activities of special districts; local government comprehensive planning.--

(6) Any independent special district created pursuant to chapter 190 is authorized to provide housing and housing assistance for persons whose total annual household income does not exceed 140 percent of the area median income, adjusted for family size.

(7) Any independent special district created pursuant to special act or general law, including, but not limited to, this chapter and chapter 298, for the purpose of providing urban infrastructure or services is authorized to provide housing and housing assistance for its employed personnel whose total annual household income does not exceed 140 percent of the area median income, adjusted for family size.

Section 6. Subsection (19) is added to section 191.006, Florida Statutes, to read:

191.006 General powers.--The district shall have, and the board may exercise by majority vote, the following powers:

(19) To provide housing and housing assistance for its employed personnel whose total annual household income does not exceed 140 percent of the area median income, adjusted for family size.

Section 7. Subsection (5) is added to section 193.017, Florida Statutes, to read:

193.017 Low-income housing tax credit.--Property used for affordable housing which has received a low-income housing tax credit from the Florida Housing Finance Corporation, as authorized by s. 420.5099, shall be assessed under s. 193.011 and, consistent with s. 420.5099(5) and (6), pursuant to this section.

(5) If a capitalization rate is used to assess just valuation for the affordable housing property, the appraiser shall use a capitalization rate that is comparable to a rate used for nonaffordable market-based properties.

Section 8. Section 193.018, Florida Statutes, is created to read:

193.018 The Manny Diaz Affordable Housing Property Tax Relief Initiative.--

(1) For the purpose of assessing just valuation of affordable housing properties serving persons with income limits defined as extremely low, low, moderate, and very low, as specified in s. 420.0004(8), (10), (11), and (15), the actual rental income from rent-restricted units in such a property shall be recognized by the property appraiser for assessment

purposes, and a rental income approach pursuant to s. 193.011(7) shall be used for assessment of the rents for the following affordable housing properties:

(a) Property that is funded by the United States Department of Housing and Urban Development under s. 8 of the United States Housing Act of 1937 that is used to provide affordable housing serving eligible persons as defined by s. 159.603(7) and elderly persons, extremely-low-income persons, and very-low-income persons as defined by s. 420.0004(7), (8), and (15) and that has undergone financial restructuring as provided in s. 501, Title V, Subtitle A of the Multifamily Assisted Housing Reform and Affordability Act of 1997;

(b) Multifamily, farmworker, or elderly rental properties that are funded by the Florida Housing Finance Corporation under ss. 420.5087 and 420.5089 and the State Housing Initiatives Partnership Program under ss. 420.9072 and 420.9075, s. 42 of the Internal Revenue Code, 26 U.S.C. s. 42; the HOME Investment Partnership Program under the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. s. 12741 et seq.; or the Federal Home Loan Banks' Affordable Housing Program established pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73; or

(c) Multifamily residential rental properties of 10 or more units that are deed restricted as affordable housing and certified by the local housing agency as having at least 95 percent of its units providing affordable housing to extremely-low-income persons, very-low-income persons, low-income persons,

and moderate-income persons as defined by s. 420.0004(8), (15), (10), and (11).

(2) Properties used for affordable housing which have received a low-income housing tax credit from the Florida Housing Finance Corporation, as authorized by s. 420.5099, shall be assessed with priority consideration given to the rental income approach under s. 193.011(7) and, consistent with s. 420.5099(5) and (6), pursuant to this section, the following assumptions shall apply:

(a) The tax credits granted and the financing generated by the tax credits may not be considered as income to the property.

(b) The actual rental income from rent-restricted units in such a property shall be recognized by the property appraiser as the real rents for assessing just value.

(c) Any costs paid for by tax credits and costs paid for by additional financing proceeds received under chapter 420 may not be included in the valuation of the property.

(d) If an extended low-income housing agreement is filed in the official public records of the county in which the property is located, the agreement, and any recorded amendment or supplement thereto, shall be considered a land-use regulation and a limitation on the highest and best use of the property during the term of the agreement, amendment, or supplement.

Section 9. Section 196.1978, Florida Statutes, is amended to read:

196.1978 Affordable housing property exemption.--

(1) Property used to provide affordable housing serving eligible persons as defined by s. 159.603(7) and persons meeting

income limits specified in s. 420.0004(10)~~(9)~~, (11)~~(10)~~, and (15)~~(14)~~, which property is owned entirely by a nonprofit entity which is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and which complies with Rev. Proc. 96-32, 1996-1 C.B. 717, shall be considered property owned by an exempt entity and used for a charitable purpose, and those portions of the affordable housing property which provide housing to individuals with incomes as defined in s. 420.0004(10)~~(9)~~ and (15)~~(14)~~ shall be exempt from ad valorem taxation to the extent authorized in s. 196.196.

(2) For the purposes of this section, ownership entirely by a nonprofit entity is classified as ownership by either:

(a) A corporation not for profit; or

(b) A Florida limited partnership the sole general partner of which is either a corporation not for profit or a Florida limited liability company or corporation the sole member or shareholder, respectively, of which is a corporation not for profit.

(3) All property owned by a nonprofit entity identified in this section shall comply with the criteria for determination of exempt status to be applied by property appraisers on an annual basis as defined in s. 196.195. In order to qualify for exempt status, the nonprofit entity must affirmatively demonstrate to the property appraiser that no part of the subject property, or the sale, lease, or other disposition of the assets of the property, will inure to the benefit of its member, officers, limited liability partners, or any person or firm operating for profit of for a nonexempt purpose. The Legislature intends that

any property owned by a limited liability company which is disregarded as an entity for federal income tax purposes pursuant to Treasury Regulation 301.7701-3(b)(1)(ii) shall be treated as owned by its sole member.

Section 10. Paragraphs (o) and (q) of subsection (5) of section 212.08, Florida Statutes, are amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.--

(o) Building materials in redevelopment projects.--

1. As used in this paragraph, the term:

a. "Building materials" means tangible personal property that becomes a component part of a housing project or a mixed-use project.

b. "Housing project" means the conversion of an existing manufacturing or industrial building to housing units in an urban high-crime area, enterprise zone, empowerment zone, Front Porch Community, designated brownfield area, or urban infill area and in which the developer agrees to set aside at least 20 percent of the housing units in the project for extremely-low-income, low-income, and moderate-income persons or the construction in a designated brownfield area of affordable housing for persons described in s. 420.0004(8) ~~(9)~~, (11) ~~(10)~~, or (15) ~~(14)~~, or in s. 159.603(7).

c. "Mixed-use project" means the conversion of an existing manufacturing or industrial building to mixed-use units that include artists' studios, art and entertainment services, or other compatible uses. A mixed-use project must be located in an urban high-crime area, enterprise zone, empowerment zone, Front Porch Community, designated brownfield area, or urban infill area, and the developer must agree to set aside at least 20 percent of the square footage of the project for low-income and moderate-income housing.

d. "Substantially completed" has the same meaning as provided in s. 192.042(1).

2. Building materials used in the construction of a housing project or mixed-use project are exempt from the tax imposed by this chapter upon an affirmative showing to the satisfaction of the department that the requirements of this paragraph have been met. This exemption inures to the owner through a refund of previously paid taxes. To receive this refund, the owner must file an application under oath with the department which includes:

a. The name and address of the owner.

b. The address and assessment roll parcel number of the project for which a refund is sought.

c. A copy of the building permit issued for the project.

d. A certification by the local building code inspector that the project is substantially completed.

e. A sworn statement, under penalty of perjury, from the general contractor licensed in this state with whom the owner contracted to construct the project, which statement lists the

building materials used in the construction of the project and the actual cost thereof, and the amount of sales tax paid on these materials. If a general contractor was not used, the owner shall provide this information in a sworn statement, under penalty of perjury. Copies of invoices evidencing payment of sales tax must be attached to the sworn statement.

3. An application for a refund under this paragraph must be submitted to the department within 6 months after the date the project is deemed to be substantially completed by the local building code inspector. Within 30 working days after receipt of the application, the department shall determine if it meets the requirements of this paragraph. A refund approved pursuant to this paragraph shall be made within 30 days after formal approval of the application by the department. The provisions of s. 212.095 do not apply to any refund application made under this paragraph.

4. The department shall establish by rule an application form and criteria for establishing eligibility for exemption under this paragraph.

5. The exemption shall apply to purchases of materials on or after July 1, 2000.

(q) Community contribution tax credit for donations.--

1. Authorization.--~~Beginning July 1, 2001,~~ Persons who are registered with the department under s. 212.18 to collect or remit sales or use tax and who make donations to eligible sponsors are eligible for tax credits against their state sales and use tax liabilities as provided in this paragraph:

a. The credit shall be computed as 50 percent of the person's approved annual community contribution.~~;~~

b. The credit shall be granted as a refund against state sales and use taxes reported on returns and remitted in the 12 months preceding the date of application to the department for the credit as required in sub-subparagraph 3.c. If the annual credit is not fully used through such refund because of insufficient tax payments during the applicable 12-month period, the unused amount may be included in an application for a refund made pursuant to sub-subparagraph 3.c. in subsequent years against the total tax payments made for such year. Carryover credits may be applied for a 3-year period without regard to any time limitation that would otherwise apply under s. 215.26.~~;~~

c. A person may not receive more than $200,000 in annual tax credits for all approved community contributions made in any one year.~~;~~

d. All proposals for the granting of the tax credit require the prior approval of the Office of Tourism, Trade, and Economic Development.~~;~~

e. The total amount of tax credits which may be granted for all programs approved under this paragraph, s. 220.183, and s. 624.5105 is $10 ~~$12~~ million annually for projects that provide homeownership opportunities for extremely-low-income persons, as defined in s. 420.004(8), or low-income or very-low-income persons, as defined in s. 420.9071(19) and (28), and $3 million annually for all other projects.~~; and~~

f. A person who is eligible to receive the credit provided for in this paragraph, s. 220.183, or s. 624.5105 may receive the credit only under the one section of the person's choice.

2. Eligibility requirements.--

a. A community contribution by a person must be in the following form:

(I) Cash or other liquid assets;

(II) Real property;

(III) Goods or inventory; or

(IV) Other physical resources as identified by the Office of Tourism, Trade, and Economic Development.

b. All community contributions must be reserved exclusively for use in a project. As used in this sub-subparagraph, the term "project" means any activity undertaken by an eligible sponsor which is designed to construct, improve, or substantially rehabilitate housing that is affordable to extremely-low-income persons, as defined in s. 420.0004(8), or low-income or very-low-income households, as defined in s. 420.9071(19) and (28); designed to provide commercial, industrial, or public resources and facilities; or designed to improve entrepreneurial and job-development opportunities for low-income persons. A project may be the investment necessary to increase access to high-speed broadband capability in rural communities with enterprise zones, including projects that result in improvements to communications assets that are owned by a business. A project may include the provision of museum educational programs and materials that are directly related to any project approved between January 1, 1996, and December 31,

1999, and located in an enterprise zone designated pursuant to s. 290.0065. This paragraph does not preclude projects that propose to construct or rehabilitate housing for low-income or very-low-income households on scattered sites. With respect to housing, contributions may be used to pay the following eligible low-income and very-low-income housing-related activities:

(I) Project development impact and management fees for extremely-low-income, low-income, or very-low-income housing projects;

(II) Down payment and closing costs for eligible persons, as defined in s. 420.9071(19) and (28);

(III) Administrative costs, including housing counseling and marketing fees, not to exceed 10 percent of the community contribution, directly related to extremely-low-income, low-income, or very-low-income projects; and

(IV) Removal of liens recorded against residential property by municipal, county, or special district local governments when satisfaction of the lien is a necessary precedent to the transfer of the property to an eligible person, as defined in s. 420.9071(19) and (28), for the purpose of promoting home ownership. Contributions for lien removal must be received from a nonrelated third party.

c. The project must be undertaken by an "eligible sponsor," which includes:

(I) A community action program;

(II) A nonprofit community-based development organization whose mission is the provision of housing for extremely-low-income, low-income, or very-low-income households or increasing

entrepreneurial and job-development opportunities for low-income persons;

(III) A neighborhood housing services corporation;

(IV) A local housing authority created under chapter 421;

(V) A community redevelopment agency created under s. 163.356;

(VI) The Florida Industrial Development Corporation;

(VII) A historic preservation district agency or organization;

(VIII) A regional workforce board;

(IX) A direct-support organization as provided in s. 1009.983;

(X) An enterprise zone development agency created under s. 290.0056;

(XI) A community-based organization incorporated under chapter 617 which is recognized as educational, charitable, or scientific pursuant to s. 501(c)(3) of the Internal Revenue Code and whose bylaws and articles of incorporation include affordable housing, economic development~~,~~ or community development as the primary mission of the corporation;

(XII) Units of local government;

(XIII) Units of state government; or

(XIV) Any other agency that the Office of Tourism, Trade, and Economic Development designates by rule.

In no event may a contributing person have a financial interest in the eligible sponsor.

d. The project must be located in an area designated an enterprise zone or a Front Porch Florida Community pursuant to s. 20.18(6), unless the project increases access to high-speed broadband capability for rural communities with enterprise zones but is physically located outside the designated rural zone boundaries. Any project designed to construct or rehabilitate housing for low-income or very-low-income households as defined in s. 420.0971(19) and (28) is exempt from the area requirement of this sub-subparagraph.

e.(I) ~~For the first 6 months of the fiscal year, the Office of Tourism, Trade, and Economic Development shall reserve 80 percent of the first $10 million in available annual tax credits and 70 percent of any available annual tax credits in excess of $10 million for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28). If any such reserved annual tax credits remain after the first 6 months of the fiscal year, the office may approve the balance of these available credits for donations made to eligible sponsors for projects other than those that provide homeownership opportunities for low-income or very-low-income households.~~

~~(II) For the first 6 months of the fiscal year, the office shall reserve 20 percent of the first $10 million in available annual tax credits and 30 percent of any available annual tax credits in excess of $10 million for donations made to eligible sponsors for projects other than those that provide homeownership opportunities for low-income or very-low-income~~

~~households as defined in s. 420.9071(19) and (28). If any reserved annual tax credits remain after the first 6 months of the fiscal year, the office may approve the balance of these available credits for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income or very-low-income households.~~

~~(III)~~ If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that provide homeownership opportunities for extremely-low-income persons, as defined in s. 420.004(8), or low-income or very-low-income persons, as defined in s. 420.9071(19) and (28), are received for less than the ~~available~~ annual tax credits available for those projects ~~reserved under sub-sub-subparagraph (I)~~, the office shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for any subsequent eligible applications received before the end of the ~~first 6 months of the~~ state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that provide homeownership opportunities for extremely-low-income persons, as defined in s. 420.004(8), or low-income or very-low-income persons, as defined in s. 420.9071(19) and (28), are received for more than the ~~available~~ annual tax credits available for those projects ~~reserved under sub-sub-subparagraph (I)~~, the office shall grant the tax credits for those ~~the~~ applications as follows:

(A) If tax credit applications submitted for approved projects of an eligible sponsor do not exceed $200,000 in total,

the credits shall be granted in full if the tax credit applications are approved~~, subject to sub-sub-subparagraph (I)~~.

(B) If tax credit applications submitted for approved projects of an eligible sponsor exceed $200,000 in total, the amount of tax credits granted pursuant to sub-sub-sub-subparagraph (A) shall be subtracted from the amount of available tax credits ~~under sub-sub-subparagraph (I)~~, and the remaining credits shall be granted to each approved tax credit application on a pro rata basis.

~~(C) If, after the first 6 months of the fiscal year, additional credits become available under sub-sub-subparagraph (II), the office shall grant the tax credits by first granting to those who received a pro rata reduction up to the full amount of their request and, if there are remaining credits, granting credits to those who applied on or after the 11th business day of the state fiscal year on a first-come, first-served basis.~~

(II) ~~(IV)~~ If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for extremely-low-income persons, as defined in s. 420.004(8), or low-income or very-low-income persons, as defined in s. 420.9071(19) and (28), are received for less than the ~~available~~ annual tax credits available for those projects ~~reserved under sub-sub-subparagraph (II)~~, the office shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for any subsequent eligible applications received before the end of ~~the first 6 months of~~ the state fiscal year. If, during the first 10 business days of

the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for extremely-low-income persons, as defined in s. 420.004(8), or low-income or very-low-income persons, as defined in s. 420.9071(19) and (28), are received for more than the ~~available~~ annual tax credits available for those projects ~~reserved under sub-sub-subparagraph (II)~~, the office shall grant the tax credits for those ~~the~~ applications on a pro rata basis. ~~If, after the first 6 months of the fiscal year, additional credits become available under sub-sub-subparagraph (I), the office shall grant the tax credits by first granting to those who received a pro rata reduction up to the full amount of their request and, if there are remaining credits, granting credits to those who applied on or after the 11th business day of the state fiscal year on a first-come, first-served basis.~~

3. Application requirements.--

a. Any eligible sponsor seeking to participate in this program must submit a proposal to the Office of Tourism, Trade, and Economic Development which sets forth the name of the sponsor, a description of the project, and the area in which the project is located, together with such supporting information as is prescribed by rule. The proposal must also contain a resolution from the local governmental unit in which the project is located certifying that the project is consistent with local plans and regulations.

b. Any person seeking to participate in this program must submit an application for tax credit to the office ~~of Tourism, Trade, and Economic Development~~ which sets forth the name of the

sponsor, a description of the project, and the type, value, and purpose of the contribution. The sponsor shall verify the terms of the application and indicate its receipt of the contribution, which verification must be in writing and accompany the application for tax credit. The person must submit a separate tax credit application to the office for each individual contribution that it makes to each individual project.

c. Any person who has received notification from the office ~~of Tourism, Trade, and Economic Development~~ that a tax credit has been approved must apply to the department to receive the refund. Application must be made on the form prescribed for claiming refunds of sales and use taxes and be accompanied by a copy of the notification. A person may submit only one application for refund to the department within any 12-month period.

4. Administration.--

a. The Office of Tourism, Trade, and Economic Development may adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to administer this paragraph, including rules for the approval or disapproval of proposals by a person.

b. The decision of the office ~~of Tourism, Trade, and Economic Development~~ must be in writing, and, if approved, the notification shall state the maximum credit allowable to the person. Upon approval, the office shall transmit a copy of the decision to the Department of Revenue.

c. The office ~~of Tourism, Trade, and Economic Development~~ shall periodically monitor all projects in a manner consistent with available resources to ensure that resources are used in

accordance with this paragraph; however, each project must be reviewed at least once every 2 years.

d. The office ~~of Tourism, Trade, and Economic Development~~ shall, in consultation with the Department of Community Affairs~~,~~ ~~the Florida Housing Finance Corporation,~~ and the statewide and regional housing and financial intermediaries, market the availability of the community contribution tax credit program to community-based organizations.

5. Expiration.--This paragraph expires June 30, 2015; however, any accrued credit carryover that is unused on that date may be used until the expiration of the 3-year carryover period for such credit.

Section 11. Paragraph (c) of subsection (1) and paragraph (b) of subsection (2) of section 220.183, Florida Statutes, are amended to read:

220.183 Community contribution tax credit.--

(1) AUTHORIZATION TO GRANT COMMUNITY CONTRIBUTION TAX CREDITS; LIMITATIONS ON INDIVIDUAL CREDITS AND PROGRAM SPENDING.--

(c) The total amount of tax credit which may be granted for all programs approved under this section, s. 212.08(5)(q), and s. 624.5105 is $10 ~~$12~~ million annually for projects that provide homeownership opportunities for extremely-low-income persons, as defined in s. 420.004(8), or low-income or very-low-income persons, as defined in s. 420.9071(19) and (28), and $3 million annually for all other projects.

(2) ELIGIBILITY REQUIREMENTS.--

(b)1. All community contributions must be reserved exclusively for use in projects as defined in s. 220.03(1)(t).

~~2. For the first 6 months of the fiscal year, the Office of Tourism, Trade, and Economic Development shall reserve 80 percent of the first $10 million in available annual tax credits, and 70 percent of any available annual tax credits in excess of $10 million, for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28). If any reserved annual tax credits remain after the first 6 months of the fiscal year, the office may approve the balance of these available credits for donations made to eligible sponsors for projects other than those that provide homeownership opportunities for low-income or very-low-income households.~~

~~3. For the first 6 months of the fiscal year, the office shall reserve 20 percent of the first $10 million in available annual tax credits, and 30 percent of any available annual tax credits in excess of $10 million, for donations made to eligible sponsors for projects other than those that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28). If any reserved annual tax credits remain after the first 6 months of the fiscal year, the office may approve the balance of these available credits for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income or very-low-income households.~~

2.~~4.~~ If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that provide homeownership opportunities for extremely-low-income persons, as defined in s. 420.004(8), or low-income or very-low-income persons, as defined in s. 420.9071(19) and (28), are received for less than the ~~available~~ annual tax credits available for those projects ~~reserved under subparagraph 2.~~, the office shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for any subsequent eligible applications received before the end of the ~~first 6 months of the~~ state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that provide homeownership opportunities for extremely-low-income persons, as defined in s. 420.004(8), or low-income or very-low-income persons, as defined in s. 420.9071(19) and (28), are received for more than the ~~available~~ annual tax credits available for those projects ~~reserved under subparagraph 2.~~, the office shall grant the tax credits for those ~~such~~ applications as follows:

a. If tax credit applications submitted for approved projects of an eligible sponsor do not exceed $200,000 in total, the credit shall be granted in full if the tax credit applications are approved~~, subject to the provisions of subparagraph 2~~.

b. If tax credit applications submitted for approved projects of an eligible sponsor exceed $200,000 in total, the amount of tax credits granted under sub-subparagraph a. shall be subtracted from the amount of available tax credits ~~under~~

~~subparagraph 2.~~, and the remaining credits shall be granted to each approved tax credit application on a pro rata basis.

~~c. If, after the first 6 months of the fiscal year, additional credits become available pursuant to subparagraph 3., the office shall grant the tax credits by first granting to those who received a pro rata reduction up to the full amount of their request and, if there are remaining credits, granting credits to those who applied on or after the 11th business day of the state fiscal year on a first-come, first-served basis.~~

3.~~5.~~ If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for extremely-low-income persons, as defined in s. 420.004(8), or low-income or very-low-income persons, as defined in s. 420.9071(19) and (28), are received for less than the ~~available~~ annual tax credits available for those projects ~~reserved under subparagraph 3.~~, the office shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for any subsequent eligible applications received before the end of the ~~first 6 months of the~~ state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for extremely-low-income persons, as defined in s. 420.004(8), or low-income or very-low-income persons, as defined in s. 420.9071(19) and (28), are received for more than the ~~available~~ annual tax credits available for those projects ~~reserved under subparagraph 3.~~, the office shall grant the tax

credits for those ~~such~~ applications on a pro rata basis. ~~If, after the first 6 months of the fiscal year, additional credits become available under subparagraph 2., the office shall grant the tax credits by first granting to those who received a pro rata reduction up to the full amount of their request and, if there are remaining credits, granting credits to those who applied on or after the 11th business day of the state fiscal year on a first-come, first-served basis.~~

Section 12. Paragraph (f) of subsection (6) of section 253.034, Florida Statutes, is amended to read:

253.034 State-owned lands; uses.--

(6) The Board of Trustees of the Internal Improvement Trust Fund shall determine which lands, the title to which is vested in the board, may be surplused. For conservation lands, the board shall make a determination that the lands are no longer needed for conservation purposes and may dispose of them by an affirmative vote of at least three members. In the case of a land exchange involving the disposition of conservation lands, the board must determine by an affirmative vote of at least three members that the exchange will result in a net positive conservation benefit. For all other lands, the board shall make a determination that the lands are no longer needed and may dispose of them by an affirmative vote of at least three members.

(f)1. In reviewing lands owned by the board, the council shall consider whether such lands would be more appropriately owned or managed by the county or other unit of local government in which the land is located. The council shall recommend to the

board whether a sale, lease, or other conveyance to a local government would be in the best interests of the state and local government. The provisions of this paragraph in no way limit the provisions of ss. 253.111 and 253.115. Such lands shall be offered to the state, county, or local government for a period of 30 days. Permittable uses for such surplus lands may include public schools; public libraries; fire or law enforcement substations; ~~and~~ governmental, judicial, or recreational centers; and affordable housing. County or local government requests for surplus lands shall be expedited throughout the surplusing process. If the county or local government does not elect to purchase such lands in accordance with s. 253.111, then any surplusing determination involving other governmental agencies shall be made upon the board deciding the best public use of the lands. Surplus properties in which governmental agencies have expressed no interest shall then be available for sale on the private market.

2. Notwithstanding subparagraph 1., any surplus lands that were acquired by the state prior to 1958 by a gift or other conveyance for no consideration from a municipality, and which the department has filed by July 1, 2006, a notice of its intent to surplus, shall be first offered for reconveyance to such municipality at no cost, but for the fair market value of any building or other improvements to the land, unless otherwise provided in a deed restriction of record. This subparagraph expires July 1, 2006.

Section 13. Section 253.0341, Florida Statutes, is amended to read:

253.0341 Surplus of state-owned lands to counties or local governments.--Counties and local governments may submit surplusing requests for state-owned lands directly to the board of trustees. County or local government requests for the state to surplus conservation or nonconservation lands, whether for purchase or exchange, shall be expedited throughout the surplusing process. Property jointly acquired by the state and other entities shall not be surplused without the consent of all joint owners.

(1) The decision to surplus state-owned nonconservation lands may be made by the board without a review of, or a recommendation on, the request from the Acquisition and Restoration Council or the Division of State Lands. Such requests for nonconservation lands shall be considered by the board within 60 days of the board's receipt of the request.

(2) County or local government requests for the surplusing of state-owned conservation lands are subject to review of, and recommendation on, the request to the board by the Acquisition and Restoration Council. Requests to surplus conservation lands shall be considered by the board within 120 days of the board's receipt of the request.

(3) A local government may request that state lands be specifically declared surplus lands for the purpose of providing affordable housing. The request shall comply with the requirements of subsection (1) if the lands are nonconservation lands or subsection (2) if the lands are conservation lands. Surplus lands that are conveyed to a local government for

affordable housing shall be disposed of by the local government under the provisions of s. 125.379 or s. 166.0451.

Section 14. Section 295.16, Florida Statutes, is amended to read:

295.16 Disabled veterans exempt from certain license or permit fee.--No totally and permanently disabled veteran who is a resident of Florida and honorably discharged from the Armed Forces, who has been issued a valid identification card by the Department of Veterans' Affairs in accordance with s. 295.17 or has been determined by the United States Department of Veterans Affairs or its predecessor to have a service-connected 100-percent disability rating for compensation, or who has been determined to have a service-connected disability rating of 100 percent and is in receipt of disability retirement pay from any branch of the uniformed armed services, shall be required to pay any license or permit fee, by whatever name known, to any county or municipality in order to make improvements upon a dwelling ~~mobile home~~ owned by the veteran which is used as the veteran's residence, provided such improvements are limited to ramps, widening of doors, and similar improvements for the purpose of making the dwelling ~~mobile home~~ habitable for veterans confined to wheelchairs.

Section 15. Paragraphs (b) and (e) of subsection (19) of section 380.06, Florida Statutes, are amended to read:

380.06 Developments of regional impact.--

(19) SUBSTANTIAL DEVIATIONS.--

(b) Any proposed change to a previously approved development of regional impact or development order condition

which, either individually or cumulatively with other changes, exceeds any of the following criteria shall constitute a substantial deviation and shall cause the development to be subject to further development-of-regional-impact review without the necessity for a finding of same by the local government:

1. An increase in the number of parking spaces at an attraction or recreational facility by 5 percent or 300 spaces, whichever is greater, or an increase in the number of spectators that may be accommodated at such a facility by 5 percent or 1,000 spectators, whichever is greater.

2. A new runway, a new terminal facility, a 25-percent lengthening of an existing runway, or a 25-percent increase in the number of gates of an existing terminal, but only if the increase adds at least three additional gates.

3. An increase in the number of hospital beds by 5 percent or 60 beds, whichever is greater.

4. An increase in industrial development area by 5 percent or 32 acres, whichever is greater.

5. An increase in the average annual acreage mined by 5 percent or 10 acres, whichever is greater, or an increase in the average daily water consumption by a mining operation by 5 percent or 300,000 gallons, whichever is greater. An increase in the size of the mine by 5 percent or 750 acres, whichever is less. An increase in the size of a heavy mineral mine as defined in s. 378.403(7) will only constitute a substantial deviation if the average annual acreage mined is more than 500 acres and consumes more than 3 million gallons of water per day.

6. An increase in land area for office development by 5 percent or an increase of gross floor area of office development by 5 percent or 60,000 gross square feet, whichever is greater.

7. An increase in the storage capacity for chemical or petroleum storage facilities by 5 percent, 20,000 barrels, or 7 million pounds, whichever is greater.

8. An increase of development at a waterport of wet storage for 20 watercraft, dry storage for 30 watercraft, or wet/dry storage for 60 watercraft in an area identified in the state marina siting plan as an appropriate site for additional waterport development or a 5-percent increase in watercraft storage capacity, whichever is greater.

9. An increase in the number of dwelling units by 5 percent or 50 dwelling units, whichever is greater.

10. An increase in the number of dwelling units by 15 percent or 100 units, whichever is greater, provided that 20 percent of the increase in the number of dwelling units is dedicated to the construction of workforce housing. For purposes of this subparagraph, the term "workforce housing" means housing that will be made permanently affordable to a person who earns less than 140 percent of the area median income, as provided in a recorded land use restriction agreement.

11.~~10.~~ An increase in commercial development by 50,000 square feet of gross floor area or of parking spaces provided for customers for 300 cars or a 5-percent increase of either of these, whichever is greater.

12.~~11.~~ An increase in hotel or motel facility units by 5 percent or 75 units, whichever is greater.

13.~~12.~~ An increase in a recreational vehicle park area by 5 percent or 100 vehicle spaces, whichever is less.

14.~~13.~~ A decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less.

15.~~14.~~ A proposed increase to an approved multiuse development of regional impact where the sum of the increases of each land use as a percentage of the applicable substantial deviation criteria is equal to or exceeds 100 percent. The percentage of any decrease in the amount of open space shall be treated as an increase for purposes of determining when 100 percent has been reached or exceeded.

16.~~15.~~ A 15-percent increase in the number of external vehicle trips generated by the development above that which was projected during the original development-of-regional-impact review.

17.~~16.~~ Any change which would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State. The further refinement of such areas by survey shall be considered under sub-subparagraph (e)5.b.

The substantial deviation numerical standards in subparagraphs 4., 6., 10., 11., and 15. ~~14.~~, excluding residential uses, and

16. ~~15.~~, are increased by 100 percent for a project certified under s. 403.973 which creates jobs and meets criteria established by the Office of Tourism, Trade, and Economic Development as to its impact on an area's economy, employment, and prevailing wage and skill levels. The substantial deviation numerical standards in subparagraphs 4., 6., 9., 10., 11., 12., and 15. ~~14.~~ are increased by 50 percent for a project located wholly within an urban infill and redevelopment area designated on the applicable adopted local comprehensive plan future land use map and not located within the coastal high hazard area.

(e)1. Except for a development order rendered pursuant to subsection (22) or subsection (25), a proposed change to a development order that individually or cumulatively with any previous change is less than any numerical criterion contained in subparagraphs (b)1.-16. ~~(b)1.-15.~~ and does not exceed any other criterion, or that involves an extension of the buildout date of a development, or any phase thereof, of less than 5 years is not subject to the public hearing requirements of subparagraph (f)3., and is not subject to a determination pursuant to subparagraph (f)5. Notice of the proposed change shall be made to the regional planning council and the state land planning agency. Such notice shall include a description of previous individual changes made to the development, including changes previously approved by the local government, and shall include appropriate amendments to the development order.

2. The following changes, individually or cumulatively with any previous changes, are not substantial deviations:

a. Changes in the name of the project, developer, owner, or monitoring official.

b. Changes to a setback that do not affect noise buffers, environmental protection or mitigation areas, or archaeological or historical resources.

c. Changes to minimum lot sizes.

d. Changes in the configuration of internal roads that do not affect external access points.

e. Changes to the building design or orientation that stay approximately within the approved area designated for such building and parking lot, and which do not affect historical buildings designated as significant by the Division of Historical Resources of the Department of State.

f. Changes to increase the acreage in the development, provided that no development is proposed on the acreage to be added.

g. Changes to eliminate an approved land use, provided that there are no additional regional impacts.

h. Changes required to conform to permits approved by any federal, state, or regional permitting agency, provided that these changes do not create additional regional impacts.

i. Any renovation or redevelopment of development within a previously approved development of regional impact which does not change land use or increase density or intensity of use.

j. Any other change which the state land planning agency agrees in writing is similar in nature, impact, or character to the changes enumerated in sub-subparagraphs a.-i. and which does not create the likelihood of any additional regional impact.

This subsection does not require a development order amendment for any change listed in sub-subparagraphs a.-j. unless such issue is addressed either in the existing development order or in the application for development approval, but, in the case of the application, only if, and in the manner in which, the application is incorporated in the development order.

3. Except for the change authorized by sub-subparagraph 2.f., any addition of land not previously reviewed or any change not specified in paragraph (b) or paragraph (c) shall be presumed to create a substantial deviation. This presumption may be rebutted by clear and convincing evidence.

4. Any submittal of a proposed change to a previously approved development shall include a description of individual changes previously made to the development, including changes previously approved by the local government. The local government shall consider the previous and current proposed changes in deciding whether such changes cumulatively constitute a substantial deviation requiring further development-of-regional-impact review.

5. The following changes to an approved development of regional impact shall be presumed to create a substantial deviation. Such presumption may be rebutted by clear and convincing evidence.

a. A change proposed for 15 percent or more of the acreage to a land use not previously approved in the development order. Changes of less than 15 percent shall be presumed not to create a substantial deviation.

b. Except for the types of uses listed in subparagraph (b)17. ~~(b)16.~~, any change which would result in the development of any area which was specifically set aside in the application for development approval or in the development order for preservation, buffers, or special protection, including habitat for plant and animal species, archaeological and historical sites, dunes, and other special areas.

c. Notwithstanding any provision of paragraph (b) to the contrary, a proposed change consisting of simultaneous increases and decreases of at least two of the uses within an authorized multiuse development of regional impact which was originally approved with three or more uses specified in s. 380.0651(3)(c), (d), (f), and (g) and residential use.

Section 16. Paragraph (k) of subsection (3) of section 380.0651, Florida Statutes, is redesignated as paragraph (l), and a new paragraph (k) is added to that subsection to read:

380.0651 Statewide guidelines and standards.--

(3) The following statewide guidelines and standards shall be applied in the manner described in s. 380.06(2) to determine whether the following developments shall be required to undergo development-of-regional-impact review:

(k) Workforce housing.--The applicable guidelines for residential development and the residential component for multiuse development shall be increased by 20 percent where the developer demonstrates that at least 15 percent of the residential dwelling units will be dedicated to workforce housing. For purposes of this subparagraph, the term "workforce housing" means housing that will be made permanently affordable

to a person who earns less than 140 percent of the area median income, as provided in a recorded land use restriction agreement.

Section 17. Section 420.0004, Florida Statutes, is amended to read:

420.0004 Definitions.--As used in this part, unless the context otherwise indicates:

(1) "Adjusted for family size" means adjusted in a manner which results in an income eligibility level which is lower for households with fewer than four people, or higher for households with more than four people, than the base income eligibility determined as provided in subsection (10) ~~(9)~~, subsection (11) ~~(10)~~, or subsection (15) ~~(14)~~, based upon a formula as established by the United States Department of Housing and Urban Development.

(2) "Adjusted gross income" means all wages, assets, regular cash or noncash contributions or gifts from persons outside the household, and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under s. 62 of the Internal Revenue Code.

(3) "Affordable" means that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households as indicated in subsection (8), subsection (10) ~~(9)~~, subsection (11) ~~(10)~~, or subsection (15) ~~(14)~~.

(4) "Corporation" means the Florida Housing Finance Corporation.

(5) "Community-based organization" or "nonprofit organization" means a private corporation organized under chapter 617 to assist in the provision of housing and related services on a not-for-profit basis and which is acceptable to federal and state agencies and financial institutions as a sponsor of low-income housing.

(6) "Department" means the Department of Community Affairs.

(7) "Elderly" describes persons 62 years of age or older.

(8) "Extremely-low-income persons" means one or more natural persons or a family whose total annual household income does not exceed 30 percent of the median annual adjusted gross income for households within the state. The Florida Housing Finance Corporation may adjust this amount annually by rule to provide that in lower income counties, extremely-low-income may exceed 30 percent of area median income and that in higher income counties, extremely-low-income may be less than 30 percent of area median income.

(9) ~~(8)~~ "Local public body" means any county, municipality, or other political subdivision, or any housing authority as provided by chapter 421, which is eligible to sponsor or develop housing for farmworkers and very-low-income and low-income persons within its jurisdiction.

(10) ~~(9)~~ "Low-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual

adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

(11) ~~(10)~~ "Moderate-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

(12) ~~(11)~~ "Student" means any person not living with his or her parent or guardian who is eligible to be claimed by his or her parent or guardian as a dependent under the federal income tax code and who is enrolled on at least a half-time basis in a secondary school, career center, community college, college, or university.

(13) ~~(12)~~ "Substandard" means:

(a) Any unit lacking complete plumbing or sanitary facilities for the exclusive use of the occupants;

(b) A unit which is in violation of one or more major sections of an applicable housing code and where such violation poses a serious threat to the health of the occupant; or

(c) A unit that has been declared unfit for human habitation but that could be rehabilitated for less than 50 percent of the property value.

(14) ~~(13)~~ "Substantial rehabilitation" means repair or restoration of a dwelling unit where the value of such repair or restoration exceeds 40 percent of the value of the dwelling.

(15) ~~(14)~~ "Very-low-income persons" means one or more natural persons or a family, not including students, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

Section 18. Sections 420.37 and 420.530, Florida Statutes, are repealed.

Section 19. Subsection (18) of section 420.503, Florida Statutes, is amended to read:

420.503 Definitions.--As used in this part, the term:

(18) (a) "Farmworker" means a laborer who is employed on a seasonal, temporary, or permanent basis in the planting, cultivating, harvesting, or processing of agricultural or aquacultural products and who derived at least 50 percent of her or his income in the immediately preceding 12 months from such employment.

(b) "Farmworker" ~~also~~ includes a person who has retired as a laborer due to age, disability, or illness. In order to be considered retired as a farmworker due to age under this part, a person must be 50 years of age or older and must have been employed for a minimum of 5 years as a farmworker before

retirement. In order to be considered retired as a farmworker due to disability or illness, a person must:

1.~~(a)~~ Establish medically that she or he is unable to be employed as a farmworker due to that disability or illness.

2.~~(b)~~ Establish that she or he was previously employed as a farmworker.

(c) Notwithstanding paragraphs (a) and (b), when corporation-administered funds are used in conjunction with United States Department of Agriculture Rural Development funds, the term "farmworker" may mean a laborer who meets, at a minimum, the definition of "domestic farm laborer" as found in 7 C.F.R. s. 3560.11, as amended. The corporation may establish additional criteria by rule.

Section 20. Section 420.5061, Florida Statutes, is amended to read:

420.5061 Transfer of agency assets and liabilities.--Effective January 1, 1998, all assets and liabilities and rights and obligations, including any outstanding contractual obligations, of the agency shall be transferred to the corporation as legal successor in all respects to the agency. The corporation shall thereupon become obligated to the same extent as the agency under any existing agreements and be entitled to any rights and remedies previously afforded the agency by law or contract, including specifically the rights of the agency under chapter 201 and part VI of chapter 159. The corporation is a state agency for purposes of s. 159.807(4)(a). Effective January 1, 1998, all references under Florida law to the agency are deemed to mean the

corporation. The corporation shall transfer to the General Revenue Fund an amount which otherwise would have been deducted as a service charge pursuant to s. 215.20(1) if the Florida Housing Finance Corporation Fund established by s. 420.508(5), the State Apartment Incentive Loan Fund established by s. 420.5087(7), the Florida Homeownership Assistance Fund established by s. 420.5088(4) ~~(5)~~, the HOME Investment Partnership Fund established by s. 420.5089(1), and the Housing Predevelopment Loan Fund established by s. 420.525(1) were each trust funds. For purposes of s. 112.313, the corporation is deemed to be a continuation of the agency, and the provisions thereof are deemed to apply as if the same entity remained in place. Any employees of the agency and agency board members covered by s. 112.313(9)(a)6. shall continue to be entitled to the exemption in that subparagraph, notwithstanding being hired by the corporation or appointed as board members of the corporation. Effective January 1, 1998, all state property in use by the agency shall be transferred to and become the property of the corporation.

Section 21. Subsections (22), (23), and (40) of section 420.507, Florida Statutes, are amended, and subsections (44) and (45) are added to that section, to read:

420.507 Powers of the corporation.--The corporation shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including the following powers which are in addition to all other powers granted by other provisions of this part:

(22) To develop and administer the State Apartment Incentive Loan Program. In developing and administering that program, the corporation may:

(a) Make first, second, and other subordinated mortgage loans including variable or fixed rate loans subject to contingent interest for all State Apartment Incentive Loans provided for in this chapter based upon available cash flow of the projects. The corporation shall make loans exceeding 25 percent of project cost available only to nonprofit organizations and public bodies which are able to secure grants, donations of land, or contributions from other sources and to projects meeting the criteria of subparagraph 1. Mortgage loans shall be made available at the following rates of interest:

1. Zero to 3 percent interest for sponsors of projects that set aside at least ~~maintain an~~ 80 percent ~~occupancy~~ of their total units for residents qualifying as farmworkers as defined in this part ~~s. 420.503(18)~~, or commercial fishing workers as defined in this part ~~s. 420.503(5)~~, or the homeless as defined in s. 420.621(4) over the life of the loan.

2. The board may set the interest rate based on the pro rata share of units set aside for homeless residents if the total of such units is less than 80 percent of the units in the borrower's project.

3. One ~~Three~~ to 9 percent interest for sponsors of projects targeted at populations other than farmworkers, commercial fishing workers, and the homeless.

(b) Make loans exceeding 25 percent of project cost when the project serves extremely-low-income persons.

(c) Forgive indebtedness for a share of the loan attributable to the units in a project reserved for extremely-low-income persons.

(d) ~~(b)~~ Geographically and demographically target the utilization of loans.

(e) ~~(c)~~ Underwrite credit, and reject projects which do not meet the established standards of the corporation.

(f) ~~(d)~~ Negotiate with governing bodies within the state after a loan has been awarded to obtain local government contributions.

(g) ~~(e)~~ Inspect any records of a sponsor at any time during the life of the loan or the agreed period for maintaining the provisions of s. 420.5087.

(h) ~~(f)~~ Establish, by rule, the procedure for evaluating, scoring, and competitively ranking all applications based on the criteria set forth in s. 420.5087(6)(c); determining actual loan amounts; making and servicing loans; and exercising the powers authorized in this subsection.

(i) ~~(g)~~ Establish a loan loss insurance reserve to be used to protect the outstanding program investment in case of a default, deed in lieu of foreclosure, or foreclosure of a program loan.

(23) To develop and administer the Florida Homeownership Assistance Program. In developing and administering the program, the corporation may:

(a)1. Make subordinated loans to eligible borrowers for down payments or closing costs related to the purchase of the borrower's primary residence.

2. Make permanent loans to eligible borrowers related to the purchase of the borrower's primary residence.

3. Make subordinated loans to nonprofit sponsors or developers of housing for purchase of property, for construction, or for financing of housing to be offered for sale to eligible borrowers as a primary residence at an affordable price.

(b) Establish a loan loss insurance reserve to supplement existing sources of mortgage insurance with appropriated funds.

(c) Geographically and demographically target the utilization of loans.

(d) Defer repayment of loans for the term of the first mortgage.

(e) Establish flexible terms for loans with an interest rate not to exceed 3 percent per annum and which are nonamortizing for the term of the first mortgage.

(f) Require repayment of loans upon sale, transfer, refinancing, or rental of secured property, unless otherwise approved by the corporation.

(g) Accelerate a loan for monetary default, for failure to provide the benefits of the loans to eligible borrowers, or for violation of any other restriction placed upon the loan.

(h) Adopt rules for the program and exercise the powers authorized in this subsection.

(40) To establish subsidiary business entities ~~corporations~~ for the purpose of taking title to and managing and disposing of property acquired by the corporation. Such subsidiary business entities ~~corporations~~ shall be public

business entities ~~corporations~~ wholly owned by the corporation; shall be entitled to own, mortgage, and sell property on the same basis as the corporation; and shall be deemed business entities ~~corporations~~ primarily acting as an agent ~~agents~~ of the state, within the meaning of s. 768.28, on the same basis as the corporation. Any subsidiary business entity created by the corporation shall be subject to chapters 119, 120, and 286 to the same extent as the corporation. The subsidiary business entities shall have authority to make rules necessary to conduct business and to carry out the purposes of this subsection.

(44) To adopt rules for the intervention and negotiation of terms or other actions necessary to further program goals or avoid default of a program loan. Such rules must consider fiscal program goals and the preservation or advancement of affordable housing for the state.

(45) To establish by rule requirements for periodic reporting of data, including, but not limited to, financial data, housing market data, detailed economic and physical occupancy on multifamily projects, and demographic data on all housing financed through corporation programs and for participation in a housing locator system.

Section 22. Subsections (1), (3), (5), and (6) of section 420.5087, Florida Statutes, are amended to read:

420.5087 State Apartment Incentive Loan Program.--There is hereby created the State Apartment Incentive Loan Program for the purpose of providing first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-

profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons.

(1) Program funds shall be distributed over successive 3-year periods in a manner that meets the need and demand for very-low-income housing throughout the state. That need and demand must be determined by using the most recent statewide low-income rental housing market studies available at the beginning of each 3-year period. However, at least 10 percent of the program funds distributed during a 3-year period must be allocated to each of the following categories of counties, as determined by using the population statistics published in the most recent edition of the Florida Statistical Abstract:

(a) Counties that have a population of 825,000 or more. ~~more than 500,000 people;~~

(b) Counties that have a population of more than ~~between~~ 100,000 but less than 825,000. ~~and 500,000 people; and~~

(c) Counties that have a population of 100,000 or less.

Any increase in funding required to reach the 10-percent minimum shall be taken from the county category that has the largest allocation. The corporation shall adopt rules which establish an equitable process for distributing any portion of the 10 percent of program funds allocated to the county categories specified in this subsection which remains unallocated at the end of a 3-year period. Counties that have a population of 100,000 or less shall be given preference under these rules.

(3) During the first 6 months of loan or loan guarantee availability, program funds shall be reserved for use by

sponsors who provide the housing set-aside required in subsection (2) for the tenant groups designated in this subsection. The reservation of funds to each of these groups shall be determined using the most recent statewide very-low-income rental housing market study available at the time of publication of each notice of fund availability required by paragraph (6)(b). The reservation of funds within each notice of fund availability to the tenant groups in paragraphs (a), (b), and (d) may not be less than 10 percent of the funds available at that time. Any increase in funding required to reach the 10-percent minimum shall be taken from the tenant group that has the largest reservation. The reservation of funds within each notice of fund availability to the tenant group in paragraph (c) may not be less than 5 percent of the funds available at that time. The tenant groups are:

(a) Commercial fishing workers and farmworkers;

(b) Families;

(c) Persons who are homeless; and

(d) Elderly persons. Ten percent of the amount reserved for the elderly shall be reserved to provide loans to sponsors of housing for the elderly for the purpose of making building preservation, health, or sanitation repairs or improvements which are required by federal, state, or local regulation or code, or lifesafety or security-related repairs or improvements to such housing. Such a loan may not exceed $750,000 per housing community for the elderly. In order to receive the loan, the sponsor of the housing community must make a commitment to match at least 5 ~~15~~ percent of the loan amount to pay the cost of such

repair or improvement. The corporation shall establish the rate of interest on the loan, which may not exceed 3 percent, and the term of the loan, which may not exceed 15 years; however, if the lien of the corporation's encumbrance is subordinate to the lien of another mortgagee, then the term may be made coterminous with the longest term of the superior lien. The term of the loan shall be established on the basis of a credit analysis of the applicant. The corporation shall establish, by rule, the procedure and criteria for receiving, evaluating, and competitively ranking all applications for loans under this paragraph. A loan application must include evidence of the first mortgagee's having reviewed and approved the sponsor's intent to apply for a loan. A nonprofit organization or sponsor may not use the proceeds of the loan to pay for administrative costs, routine maintenance, or new construction.

(5) The amount of the mortgage provided under this program combined with any other mortgage in a superior position shall be less than the value of the project without the housing set-aside required by subsection (2). However, the corporation may waive this requirement for projects in rural areas or urban infill areas which have market rate rents that are less than the allowable rents pursuant to applicable state and federal guidelines, and for projects which reserve units for extremely-low-income persons. In no event shall the mortgage provided under this program combined with any other mortgage in a superior position exceed total project cost.

(6) On all state apartment incentive loans, except loans made to housing communities for the elderly to provide for

lifesafety, building preservation, health, sanitation, or security-related repairs or improvements, the following provisions shall apply:

(a) The corporation shall establish two interest rates in accordance with s. 420.507(22)(a)1. and 3. ~~2.~~

(b) The corporation shall publish a notice of fund availability in a publication of general circulation throughout the state. Such notice shall be published at least 60 days prior to the application deadline and shall provide notice of the temporary reservations of funds established in subsection (3).

(c) The corporation shall provide by rule for the establishment of a review committee composed of the department and corporation staff and shall establish by rule a scoring system for evaluation and competitive ranking of applications submitted in this program, including, but not limited to, the following criteria:

1. Tenant income and demographic targeting objectives of the corporation.

2. Targeting objectives of the corporation which will ensure an equitable distribution of loans between rural and urban areas.

3. Sponsor's agreement to reserve the units for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, for a time period to exceed the minimum required by federal law or the provisions of this part.

4. Sponsor's agreement to reserve more than:

a. Twenty percent of the units in the project for persons or families who have incomes that do not exceed 50 percent of the state or local median income, whichever is higher; or

b. Forty percent of the units in the project for persons or families who have incomes that do not exceed 60 percent of the state or local median income, whichever is higher, without requiring a greater amount of the loans as provided in this section.

5. Provision for tenant counseling.

6. Sponsor's agreement to accept rental assistance certificates or vouchers as payment for rent~~; however, when certificates or vouchers are accepted as payment for rent on units set aside pursuant to subsection (2), the benefit must be divided between the corporation and the sponsor, as provided by corporation rule~~.

7. Projects requiring the least amount of a state apartment incentive loan compared to overall project cost except that the share of the loan attributable to units serving extremely-low-income persons shall be excluded from this requirement.

8. Local government contributions and local government comprehensive planning and activities that promote affordable housing.

9. Project feasibility.

10. Economic viability of the project.

11. Commitment of first mortgage financing.

12. Sponsor's prior experience.

13. Sponsor's ability to proceed with construction.

14. Projects that directly implement or assist welfare-to-work transitioning.

15. Projects that reserve units for extremely-low-income persons.

(d) The corporation may reject any and all applications.

(e) The corporation may approve and reject applications for the purpose of achieving geographic targeting.

(f) The review committee established by corporation rule pursuant to this subsection shall make recommendations to the board of directors of the corporation regarding program participation under the State Apartment Incentive Loan Program. The corporation board shall make the final ranking and the decisions regarding which applicants shall become program participants based on the scores received in the competitive ranking, further review of applications, and the recommendations of the review committee. The corporation board shall approve or reject applications for loans and shall determine the tentative loan amount available to each applicant selected for participation in the program. The actual loan amount shall be determined pursuant to rule adopted pursuant to s. 420.507(22) (h) ~~(f)~~.

(g) The loan term shall be for a period of not more than 15 years; however, if both a program loan and federal low-income housing tax credits are to be used to assist a project, the corporation may set the loan term for a period commensurate with the investment requirements associated with the tax credit syndication. The term of the loan may also exceed 15 years if the lien of the corporation's encumbrance is subordinate to the

lien of another mortgagee; then the term may be made coterminous with the longest term of the superior lien ~~necessary to conform to requirements of the Federal National Mortgage Association~~. The corporation may renegotiate and extend the loan in order to extend the availability of housing for the targeted population. The term of a loan may not extend beyond the period for which the sponsor agrees to provide the housing set-aside required by subsection (2).

(h) The loan shall be subject to sale, transfer, or refinancing. The sale, transfer, or refinancing of the loan shall be consistent with fiscal program goals and the preservation or advancement of affordable housing for the state. ~~However, all requirements and conditions of the loan shall remain following sale, transfer, or refinancing.~~

(i) The discrimination provisions of s. 420.516 shall apply to all loans.

(j) The corporation may require units dedicated for the elderly.

(k) Rent controls shall not be allowed on any project except as required in conjunction with the issuance of tax-exempt bonds or federal low-income housing tax credits, and except when the sponsor has committed to set aside units for extremely-low-income persons, in which case rents shall be restricted at the level applicable for federal low-income tax credits.

(l) The proceeds of all loans shall be used for new construction or substantial rehabilitation which creates affordable, safe, and sanitary housing units.

(m) Sponsors shall annually certify the adjusted gross income of all persons or families qualified under subsection (2) at the time of initial occupancy, who are residing in a project funded by this program. All persons or families qualified under subsection (2) may continue to qualify under subsection (2) in a project funded by this program if the adjusted gross income of those persons or families at the time of annual recertification meets the requirements established in s. 142(d)(3)(B) of the Internal Revenue Code of 1986, as amended. If the annual recertification of persons or families qualifying under subsection (2) results in noncompliance with income occupancy requirements, the next available unit must be rented to a person or family qualifying under subsection (2) in order to ensure continuing compliance of the project. The corporation may waive the annual recertification if 100 percent of the units are set aside as affordable.

(n) Upon submission and approval of a marketing plan which demonstrates a good faith effort of a sponsor to rent a unit or units to persons or families reserved under subsection (3) and qualified under subsection (2), the sponsor may rent such unit or units to any person or family qualified under subsection (2) notwithstanding the reservation.

(o) Sponsors may participate in federal mortgage insurance programs and must abide by the requirements of those programs. If a conflict occurs between the requirements of federal mortgage insurance programs and the requirements of this section, the requirements of federal mortgage insurance programs shall take precedence.

Section 23. Section 420.5088, Florida Statutes, is amended to read:

420.5088 Florida Homeownership Assistance Program.--There is created the Florida Homeownership Assistance Program for the purpose of assisting low-income and moderate-income persons in purchasing a home as their primary residence by reducing the cost of the home with below-market construction financing, by reducing the amount of down payment and closing costs paid by the borrower to a maximum of 5 percent of the purchase price, or by reducing the monthly payment to an affordable amount for the purchaser. Loans shall be made available at an interest rate that does not exceed 3 percent. The balance of any loan is due at closing if the property is sold, refinanced, rented, or transferred, unless otherwise approved by the corporation.

(1) For loans made available pursuant to s. 420.507(23)(a)1. or 2.:

(a) The corporation may underwrite and make those mortgage loans through the program to persons or families who have incomes that do not exceed 120 ~~80~~ percent of the state or local median income, whichever is greater, adjusted for family size.

(b) Loans shall be made available for the term of the first mortgage.

(c) Loans may not exceed ~~are limited to~~ the lesser of 35 ~~25~~ percent of the purchase price of the home or the amount necessary to enable the purchaser to meet credit underwriting criteria.

(2) For loans made pursuant to s. 420.507(23)(a)3.:

(a) Availability is limited to nonprofit sponsors or developers who are selected for program participation pursuant to this subsection.

(b) Preference must be given ~~to community development corporations as defined in s. 290.033 and~~ to community-based organizations as defined in s. 420.503.

(c) Priority must be given to projects that have received state assistance in funding project predevelopment costs.

(d) The benefits of making such loans shall be contractually provided to the persons or families purchasing homes financed under this subsection.

(e) At least 30 percent of the units in a project financed pursuant to this subsection must be sold to persons or families who have incomes that do not exceed 80 percent of the state or local median income, whichever amount is greater, adjusted for family size; and at least another 30 percent of the units in a project financed pursuant to this subsection must be sold to persons or families who have incomes that do not exceed 65 ~~50~~ percent of the state or local median income, whichever amount is greater, adjusted for family size.

(f) The maximum loan amount may not exceed 33 percent of the total project cost.

(g) A person who purchases a home in a project financed under this subsection is eligible for a loan authorized by s. 420.507(23)(a)1. or 2. in an aggregate amount not exceeding the construction loan made pursuant to this subsection. The home purchaser must meet all the requirements for loan recipients established pursuant to the applicable loan program.

(h) The corporation shall provide, by rule, for the establishment of a review committee composed of corporation staff and shall establish, by rule, a scoring system for evaluating and ranking applications submitted for construction loans under this subsection, including, but not limited to, the following criteria:

1. The affordability of the housing proposed to be built.

2. The direct benefits of the assistance to the persons who will reside in the proposed housing.

3. The demonstrated capacity of the applicant to carry out the proposal, including the experience of the development team.

4. The economic feasibility of the proposal.

5. The extent to which the applicant demonstrates potential cost savings by combining the benefits of different governmental programs and private initiatives, including the local government contributions and local government comprehensive planning and activities that promote affordable housing.

6. The use of the least amount of program loan funds compared to overall project cost.

7. The provision of homeownership counseling.

8. The applicant's agreement to exceed the requirements of paragraph (e).

9. The commitment of first mortgage financing for the balance of the construction loan and for the permanent loans to the purchasers of the housing.

10. The applicant's ability to proceed with construction.

11. The targeting objectives of the corporation which will ensure an equitable distribution of loans between rural and urban areas.

12. The extent to which the proposal will further the purposes of this program.

(i) The corporation may reject any and all applications.

(j) The review committee established by corporation rule pursuant to this subsection shall make recommendations to the corporation board regarding program participation under this subsection. The corporation board shall make the final ranking for participation based on the scores received in the ranking, further review of the applications, and the recommendations of the review committee. The corporation board shall approve or reject applicants for loans and shall determine the tentative loan amount available to each program participant. The final loan amount shall be determined pursuant to rule adopted under s. 420.507(23)(h).

(3) The corporation shall publish a notice of fund availability in a publication of general circulation throughout the state at least 60 days prior to the anticipated availability of funds.

~~(4) During the first 9 months of fund availability:~~

~~(a) Sixty percent of the program funds shall be reserved for use by borrowers pursuant to s. 420.507(23)(a)1.;~~

~~(b) Twenty percent of the program funds shall be reserved for use by borrowers pursuant to s. 420.507(23)(a)2.; and~~

~~(c) Twenty percent of the program funds shall be reserved for use by borrowers pursuant to s. 420.507(23)(a)3.~~

~~If the application of these percentages would cause the reservation of program funds under paragraph (a) to be less than $1 million, the reservation for paragraph (a) shall be increased to $1 million or all available funds, whichever amount is less, with the increase to be accomplished by reducing the reservation for paragraph (b) and, if necessary, paragraph (c).~~

(4) ~~(5)~~ There is authorized to be established by the corporation with a qualified public depository meeting the requirements of chapter 280 the Florida Homeownership Assistance Fund to be administered by the corporation according to the provisions of this program. Any amounts held in the Florida Homeownership Assistance Trust Fund for such purposes as of January 1, 1998, must be transferred to the corporation for deposit in the Florida Homeownership Assistance Fund, whereupon the Florida Homeownership Assistance Trust Fund must be closed. There shall be deposited in the fund moneys from the State Housing Trust Fund created by s. 420.0005, or moneys received from any other source, for the purpose of this program and all proceeds derived from the use of such moneys. In addition, all unencumbered funds, loan repayments, proceeds from the sale of any property, and any other proceeds that would otherwise accrue pursuant to the activities of the programs described in this section shall be transferred to this fund. In addition, all loan repayments, proceeds from the sale of any property, and any other proceeds that would otherwise accrue pursuant to the activities conducted under the provisions of the Florida Homeownership Assistance Program shall be deposited in the fund

and shall not revert to the General Revenue Fund. Expenditures from the Florida Homeownership Assistance Fund shall not be required to be included in the corporation's budget request or be subject to appropriation by the Legislature.

(5) ~~(6)~~ No more than one-fifth of the funds available in the Florida Homeownership Assistance Fund may be made available to provide loan loss insurance reserve funds to facilitate homeownership for eligible persons.

Section 24. Section 420.5095, Florida Statutes, is created to read:

420.5095 Community Workforce Housing Innovation Program.--

(1) The Community Workforce Housing Innovation Program is created for the purpose of providing affordable rental and home ownership community workforce housing for essential services personnel with medium incomes in high-cost and high-growth counties in this state using regulatory incentives and state and local funds to promote local public-private partnerships and leverage government and private resources.

(2) Subject to the availability of an annual appropriation by the Legislature to fund the Community Workforce Housing Innovation Program, the corporation shall have the authority to provide Community Workforce Housing Innovation Program loans, which may be forgivable, to an applicant for construction or rehabilitation of rental or home ownership workforce housing in eligible counties. The corporation shall establish a funding process and selection criteria by rule or request for proposals to distribute annually appropriated funds under this section.

Funding may be used with other corporation and private sector resources.

(3) The corporation shall provide incentives for local governments in these counties to use local affordable housing funds, such as those from the State Housing Initiatives Partnership Program to assist in meeting the affordable housing needs of persons eligible under this program.

(4) The Community Workforce Housing Innovation Program projects shall target:

(a) "High-cost counties," defined as those counties in which the median sales price of a single-family home using the most recent county level statistics is above the state median sales price of a single-family home, areas of critical state concern designated under s. 380.05 for which the Legislature has declared its intent to provide affordable housing, areas that were designated as areas of critical state concern for at least 20 consecutive years prior to removal of the designation, and counties designated as rural areas of critical economic concern. The corporation shall develop the list of high-cost counties on an annual basis.

(b) "High-growth counties," defined as those counties that demonstrate significantly high rates of growth in K-12 public school students and a substantial number of open teaching positions currently and projected for the next school year. To qualify under these criteria of high growth and need to fill public school teaching positions, a county's school district must have been in the top 10 school districts in the state for the fastest student population growth as a percentage rate of

increase for the previous 5 years, as defined by the Department of Education. Counties with school districts having the greatest number of teaching position vacancies shall be prioritized.

(c) "Public-private partnerships," defined to include substantial involvement of at least one county, one municipality, or one public sector entity, such as a school district or other unit of local government in which the project is to be located, and at least one private not-for-profit or for-profit project partner. Partnerships are encouraged to include one or more private sector business or charitable entities and may be any form of business entity, including a joint venture or contractual agreement.

(d) "Workforce housing," defined as housing affordable to natural persons or families whose total annual household income does not exceed 140 percent of the area median income, adjusted for household size, in prioritized areas included in this subsection, or 150 percent of the area median income, adjusted for household size, in areas of critical state concern or in areas that were designated as areas of critical state concern for at least 20 consecutive years prior to removal of the designation.

(e) "Essential services personnel," defined as persons in need of affordable housing who are employed in areas in which they are considered essential services personnel, as defined by each county and eligible municipality within its local housing assistance plan pursuant to s. 420.9075(3)(a).

(f) Innovative projects that include new construction or rehabilitation of existing housing, mixed-income housing, or commercial and housing mixed-use elements.

(5) No more than one project shall be funded per county per year. The corporation shall seek to achieve a 70-percent high-cost, 30-percent high-growth ratio in its annual funding of projects. However, when one project in each of the high-cost and high-growth counties which have made application have been funded, the corporation may fund other projects as provided in this section.

(6)(a) Projects shall receive priority consideration for funding where the local jurisdiction has allowed appropriate workforce housing incentives to promote the financial viability, successful development, and ongoing maintenance of these housing developments, such as:

1. The processing of approvals of development orders or development permits, as defined in s. 163.3164(7) and (8), for affordable housing projects shall be expedited to a greater degree than other projects.

2. Mitigation of impact fees by reduction, waiver, or an alternative method of fee payment by the local government in which the proposed project is to be located.

3. Increased density levels, density bonuses for affordable housing of up to 16 units or higher density per acre shall be allowed, except in coastal high-hazard areas, if approved by the local government, for community workforce housing.

4. Reserving infrastructure capacity in the local comprehensive plan for affordable housing shall be reserved for these communities.

5. Allowing additional affordable residential units, including accessory units in residential zoning districts.

6. Allow mixed land uses, such as compatible neighborhood commercial centers and mixed-use planned unit developments.

7. Reduction of open space, building setback requirements, road widths, parking, and other requirements which are not essential to protect the public health, safety, and welfare or critical to protect the environment.

8. Allowing zero-lot-line and other flexible lot configurations.

9. Traffic concurrency requirements shall be modified or reduced by up to 25 percent.

10. Local transportation infrastructure funding shall be considered eligible for prioritization from metropolitan planning organizations.

(b) The regulatory incentives for approved Community Workforce Housing Innovation Program projects shall be considered acceptable by the respective local government maintaining jurisdiction over the site of the project, if:

1. The applicant receives a letter of support from the local government for the project application submitted to the corporation; or

2. Within 60 days after receipt of the applicant's plan by the local government, a vote of "no objection" regarding the project is taken by that body. During the 60-day period, the

local government and project applicant may agree to modify the project incentives and size of the development with approval from the corporation and still be eligible for project funding.

(7) All eligible applications shall:

(a) Set aside at least 80 percent of the units for workforce housing.

(b) Set aside at least 50 percent of the units as prioritized for eligible persons who are employed as essential services personnel.

(c) For rental projects, restrict rents for all workforce housing serving those with incomes up to 120 percent of area median income at the appropriate income level using the restricted rents for the federal low-income housing tax credit program and, for workforce housing units serving those with incomes up to 140 percent of area median income, restrict rents to those established by the corporation, not to exceed 40 percent of the maximum household income adjusted to unit size.

(d) For home ownership, limit the sales price of a detached unit, townhome, or condominium unit to not more than the median sales price for that type of unit in that county and require that all eligible purchasers of home ownership units occupy the homes as their primary residence.

(e) Demonstrate that the program applicant consists of a public-private partnership of at least one local government or special district public sector entity and one private not-for-profit or for-profit partner.

(f) Demonstrate how the applicant will use the regulatory incentives outlined in subsection (6) and include, if available,

any letters of support for the incentives referenced in subparagraph (6)(b)1. from the local jurisdiction in which the proposed project is to be located.

(g) Demonstrate that the applicant possesses title to or site control of land and evidences availability of required infrastructure.

(h) Provide any research or facts available supporting the demand and need for rental or home ownership workforce housing for qualified workforce residents in the county in which the project is proposed.

(i) Have grants, donations of land, or contributions from the public-private partnership or other sources collectively totaling at least 15 percent of the total development cost. Such grants, donations of land, or contributions must only be evidenced by a letter of commitment at the time of application.

(j) Demonstrate accessibility to commercial businesses, services, and employment opportunities needed to serve the needs of the residents or include a viable plan to provide transportation access to those commercial businesses, services, and jobs.

(k) Demonstrate a marketing and sales plan to ensure that residents fit the income requirements and workforce employment demand for essential services, as well as alternative strategies to sell or lease units to other qualified individuals if essential services personnel are not immediately available or qualified for the units.

(l) Provide a development cost pro forma financial statement for the project.

(m) Demonstrate the applicant's affordable housing development and management experience.

(n) Demonstrate the long-term affordability of the rental or homeownership units.

(o) May include manufactured housing constructed after June 1994 and installed in accordance with mobile home installation standards of the Department of Highway and Motor Vehicles. As part of its application, the public-private partnership shall include local contributions or financial strategies, such as:

1. Promotion and support of employer-assisted housing programs;

2. Tax increment financing;

3. Funding from local option taxes;

4. Land for the development; or

5. Financial assistance packages to homebuyers.

(8)(a) The corporation shall establish a review committee and shall establish a scoring system for evaluation and competitive ranking of applications submitted to the program. The ranking shall ensure an opportunity for a greater number of high-cost, high-growth counties to receive project funding.

(b) The corporation shall award loans with interest rates set at 1 to 3 percent, which may be forgivable if the project continues to meet the rental or ownership criteria outlined in subsection (4). The corporation shall develop rules and guidelines to set the terms of forgivability.

(9) The corporation may use a maximum of 2 percent of the annual appropriation per state fiscal year for administration and compliance monitoring.

(10) The corporation shall develop and implement within the Community Workforce Housing Innovation Program a down-payment assistance program.

(11) On an annual basis, the corporation shall review the success of the Community Workforce Housing Innovation Program to ascertain whether the projects produced by the program are useful in meeting the housing needs of high-cost and high-growth counties. The corporation shall submit any recommendations regarding the program to the Governor, the Speaker of the House of Representatives, and the President of the Senate not later than 2 months after the end of the corporation's fiscal year.

Section 25. Subsection (25) of section 420.9071, Florida Statutes, is amended to read:

420.9071 Definitions.--As used in ss. 420.907-420.9079, the term:

(25) "Recaptured funds" means funds that are recouped by a county or eligible municipality in accordance with the recapture provisions of its local housing assistance plan pursuant to s. 420.9075(5) ~~(4)~~ (g) from eligible persons or eligible sponsors who default on the terms of a grant award or loan award.

Section 26. Subsection (2) of section 420.9072, Florida Statutes, is amended to read:

420.9072 State Housing Initiatives Partnership Program.--The State Housing Initiatives Partnership Program is created for the purpose of providing funds to counties and

eligible municipalities as an incentive for the creation of local housing partnerships, to expand production of and preserve affordable housing, to further the housing element of the local government comprehensive plan specific to affordable housing, and to increase housing-related employment.

(2)(a) To be eligible to receive funds under the program, a county or eligible municipality must:

1. Submit to the corporation its local housing assistance plan describing the local housing assistance strategies established pursuant to s. 420.9075;

2. Within 12 months after adopting the local housing assistance plan, amend the plan to incorporate the local housing incentive strategies defined in s. 420.9071(16) and described in s. 420.9076; and

3. Within 24 months after adopting the amended local housing assistance plan to incorporate the local housing incentive strategies, amend its land development regulations or establish local policies and procedures, as necessary, to implement the local housing incentive strategies adopted by the local governing body. A county or an eligible municipality that has adopted a housing incentive strategy pursuant to s. 420.9076 before the effective date of this act shall review the status of implementation of the plan according to its adopted schedule for implementation and report its findings in the annual report required by s. 420.9075(10) ~~(9)~~. If as a result of the review, a county or an eligible municipality determines that the implementation is complete and in accordance with its schedule, no further action is necessary. If a county or an eligible

municipality determines that implementation according to its schedule is not complete, it must amend its land development regulations or establish local policies and procedures, as necessary, to implement the housing incentive plan within 12 months after the effective date of this act, or if extenuating circumstances prevent implementation within 12 months, pursuant to s. 420.9075(13) ~~(12)~~, enter into an extension agreement with the corporation.

(b) A county or an eligible municipality seeking approval to receive its share of the local housing distribution must adopt an ordinance containing the following provisions:

1. Creation of a local housing assistance trust fund as described in s. 420.9075(6) ~~(5)~~.

2. Adoption by resolution of a local housing assistance plan as defined in s. 420.9071(14) to be implemented through a local housing partnership as defined in s. 420.9071(18).

3. Designation of the responsibility for the administration of the local housing assistance plan. Such ordinance may also provide for the contracting of all or part of the administrative or other functions of the program to a third person or entity.

4. Creation of the affordable housing advisory committee as provided in s. 420.9076.

The ordinance must not take effect until at least 30 days after the date of formal adoption. Ordinances in effect prior to the effective date of amendments to this section shall be amended as needed to conform to new provisions.

Section 27. Paragraphs (a) and (c) of present subsection (4) of section 420.9075, Florida Statutes, are amended, subsections (3) through (12) are renumbered as subsections (4) through (13), respectively, and a new subsection (3) is added to that section, to read:

420.9075 Local housing assistance plans; partnerships.--

(3)(a) Each local housing assistance plan shall include a definition of essential service personnel for the county or eligible municipality, including, but not limited to, teachers and educators, other school district, community college, and university employees, police and fire personnel, health care personnel, skilled building trades personnel, and other job categories.

(b) Each county and each eligible municipality is encouraged to develop a strategy within its local housing assistance plan that emphasizes the recruitment and retention of essential service personnel and persons skilled in the building trades. The local government is encouraged to involve public and private sector employers. Compliance with the eligibility criteria established under this strategy shall be verified by the county or eligible municipality.

(c) Each county and each eligible municipality is encouraged to develop a strategy within its local housing assistance plan that addresses the needs of persons who are deprived of affordable housing due to the closure of a mobile home park or the conversion of affordable rental units to condominiums.

(5) ~~(4)~~ The following criteria apply to awards made to eligible sponsors or eligible persons for the purpose of providing eligible housing:

(a) At least 65 percent of the funds made available in each county and eligible municipality from the local housing distribution must be reserved for rehabilitation and construction of home ownership units for eligible extremely-low-income, low-income, or very-low-income persons.

(c) The sales price or value of new or existing eligible housing may not exceed 90 percent of the average area purchase price in the statistical area in which the eligible housing is located. Such average area purchase price may be that calculated for any 12-month period beginning not earlier than the fourth calendar year prior to the year in which the award occurs or as otherwise established by the United States Department of the Treasury.

If both an award under the local housing assistance plan and federal low-income housing tax credits are used to assist a project and there is a conflict between the criteria prescribed in this subsection and the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, the county or eligible municipality may resolve the conflict by giving precedence to the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, in lieu of following the criteria prescribed in this subsection with the exception of paragraphs (a) and (d) of this subsection.

Section 28. Subsection (6) of section 420.9076, Florida Statutes, is amended to read:

420.9076 Adoption of affordable housing incentive strategies; committees.--

(6) Within 90 days after the date of receipt of the local housing incentive strategies recommendations from the advisory committee, the governing body of the appointing local government shall adopt an amendment to its local housing assistance plan to incorporate the local housing incentive strategies it will implement within its jurisdiction. The amendment must include, at a minimum, the local housing incentive strategies specified ~~as defined~~ in paragraphs (4)(a)-(j) ~~s. 420.9071(16)~~.

Section 29. Subsection (2) of section 420.9079, Florida Statutes, is amended to read:

420.9079 Local Government Housing Trust Fund.--

(2) The corporation shall administer the fund exclusively for the purpose of implementing the programs described in ss. 420.907-420.9078 and this section. With the exception of monitoring the activities of counties and eligible municipalities to determine local compliance with program requirements, the corporation shall not receive appropriations from the fund for administrative or personnel costs. For the purpose of implementing the compliance monitoring provisions of s. 420.9075(9) ~~(8)~~, the corporation may request a maximum of one-quarter of 1 percent of the annual appropriation ~~$200,000~~ per state fiscal year. When such funding is appropriated, the corporation shall deduct the amount appropriated prior to

calculating the local housing distribution pursuant to ss. 420.9072 and 420.9073.

Section 30. Paragraph (c) of subsection (1) and paragraph (e) of subsection (2) of section 624.5105, Florida Statutes, are amended to read:

624.5105 Community contribution tax credit; authorization; limitations; eligibility and application requirements; administration; definitions; expiration.--

(1) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.--

(c) The total amount of tax credit which may be granted for all programs approved under this section and ss. 212.08(5)(q) and 220.183 is $10 ~~$12~~ million annually for projects that provide homeownership opportunities for extremely-low-income persons, as defined in s. 420.0004(8), or low-income or very-low-income persons, as defined in s. 420.9071(19) and (28), and $3 million annually for all other projects.

(2) ELIGIBILITY REQUIREMENTS.--

(e)1. ~~For the first 6 months of the fiscal year, the Office of Tourism, Trade, and Economic Development shall reserve 80 percent of the first $10 million in available annual tax credits, and 70 percent of any available annual tax credits in excess of $10 million, for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28). If any such reserved annual tax credits remain after the first 6 months of the fiscal year, the office may approve the balance of these available credits for donations made to eligible sponsors for projects other than those that~~

~~provide homeownership opportunities for low-income or very-low-income households.~~

~~2. For the first 6 months of the fiscal year, the office shall reserve 20 percent of the first $10 million in available annual tax credits, and 30 percent of any available annual tax credits in excess of $10 million, for donations made to eligible sponsors for projects other than those that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28). If any reserved annual tax credits remain after the first 6 months of the fiscal year, the office may approve the balance of these available credits for donations made to eligible sponsors for projects that provide homeownership opportunities for low-income or very-low-income households.~~

~~3.~~ If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that provide homeownership opportunities for extremely-low-income persons, as defined in s. 420.0004(8), or low-income or very-low-income persons, as defined in s. 420.9071(19) and (28), are received for less than the ~~available~~ annual tax credits available for those projects ~~reserved under subparagraph 1.~~, the office shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for any subsequent eligible applications received before the end of the ~~first 6 months of the~~ state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that provide homeownership opportunities for extremely-low-income persons, as defined in s.

420.0004(8), or low-income or very-low-income persons, as defined in s. 420.9071(19) and (28), are received for more than the ~~available~~ annual tax credits available for those projects ~~reserved under subparagraph 1.~~, the office shall grant the tax credits for those ~~the~~ applications as follows:

a. If tax credit applications submitted for approved projects of an eligible sponsor do not exceed $200,000 in total, the credits shall be granted in full if the tax credit applications are approved~~, subject to subparagraph 1~~.

b. If tax credit applications submitted for approved projects of an eligible sponsor exceed $200,000 in total, the amount of tax credits granted under sub-subparagraph a. shall be subtracted from the amount of available tax credits ~~under subparagraph 1.~~, and the remaining credits shall be granted to each approved tax credit application on a pro rata basis.

~~c. If, after the first 6 months of the fiscal year, additional credits become available under subparagraph 2., the office shall grant the tax credits by first granting to those who received a pro rata reduction up to the full amount of their request and, if there are remaining credits, granting credits to those who applied on or after the 11th business day of the state fiscal year on a first-come, first-served basis.~~

2.~~4.~~ If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for extremely-low-income persons, as defined in s. 420.0004(8), or low-income or very-low-income persons, as defined in s. 420.9071(19) and (28,) are received for less than the ~~available~~

annual tax credits available for those projects ~~reserved under subparagraph 2.~~, the office shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for any subsequent eligible applications received before the end of the ~~first 6 months of the~~ state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for extremely-low-income persons, as defined in s. 420.0004(8), or low-income or very-low-income persons, as defined in s. 420.9071(19) and (28), are received for more than the ~~available~~ annual tax credits available for those projects ~~reserved under subparagraph 2.~~, the office shall grant the tax credits for those ~~the~~ applications on a pro rata basis. ~~If, after the first 6 months of the fiscal year, additional credits become available under subparagraph 1., the office shall grant the tax credits by first granting to those who received a pro rata reduction up to the full amount of their request and, if there are remaining credits, granting credits to those who applied on or after the 11th business day of the state fiscal year on a first-come, first-served basis.~~

Section 31. Paragraph (b) of subsection (9) of section 1001.42, Florida Statutes, is amended to read:

1001.42 Powers and duties of district school board.--The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(9) SCHOOL PLANT.--Approve plans for locating, planning, constructing, sanitating, insuring, maintaining, protecting, and

condemning school property as prescribed in chapter 1013 and as follows:

(b) Sites, buildings, and equipment.--

1. Select and purchase school sites, playgrounds, and recreational areas located at centers at which schools are to be constructed, of adequate size to meet the needs of projected students to be accommodated.

2. Approve the proposed purchase of any site, playground, or recreational area for which district funds are to be used.

3. Expand existing sites.

4. Rent buildings when necessary.

5. Enter into leases or lease-purchase arrangements, in accordance with the requirements and conditions provided in s. 1013.15(2), with private individuals or corporations for the rental of necessary grounds and educational facilities for school purposes or of educational facilities to be erected for school purposes. Current or other funds authorized by law may be used to make payments under a lease-purchase agreement. Notwithstanding any other statutes, if the rental is to be paid from funds received from ad valorem taxation and the agreement is for a period greater than 12 months, an approving referendum must be held. The provisions of such contracts, including building plans, shall be subject to approval by the Department of Education, and no such contract shall be entered into without such approval. As used in this section, "educational facilities" means the buildings and equipment that are built, installed, or established to serve educational purposes and that may lawfully

be used. The State Board of Education may adopt such rules as are necessary to implement these provisions.

6. Provide for the proper supervision of construction.

7. Make or contract for additions, alterations, and repairs on buildings and other school properties.

8. Ensure that all plans and specifications for buildings provide adequately for the safety and well-being of students, as well as for economy of construction.

9. Make certain school board lands, acquired prior to January 1, 2006, available to a private developer or nonprofit housing organization for the purpose of providing teachers and other instructional personnel housing assistance. Teachers and other instructional personnel must be eligible for assistance under chapter 420, and the school board must declare the land surplus and not needed for any facility identified in the district facilities work program required under s. 1013.35.

Section 32. Subsection (12) of section 1001.43, Florida Statutes, is renumbered as subsection (13), and a new subsection (12) is added to that section to read:

1001.43 Supplemental powers and duties of district school board.--The district school board may exercise the following supplemental powers and duties as authorized by this code or State Board of Education rule.

(12) AFFORDABLE HOUSING.--The district school board may provide affordable housing for teachers and other instructional personnel independently or in conjunction with other agencies as described in subsection (5).

Section 33. Affordable housing land donation density bonus incentives.--

(1) A local government may provide density bonus incentives pursuant to the provisions of this section to any landowner who voluntarily donates fee simple interest in real property to the local government for the purpose of assisting the local government in providing affordable housing. Donated real property must be determined by the local government to be appropriate for use as affordable housing and must be subject to deed restrictions to ensure that the property will be used for the stated purpose of affordable housing.

(2) For purposes of this section, the terms "affordable," "extremely-low-income persons," "low-income persons," "moderate-income persons," and "very-low-income persons," have the same meaning as in section 420.0004, Florida Statutes.

(3) The density bonus may be provided by the local government at the rate of one to four dwelling units per gross acre of donated land, as determined by the local government. The density bonus may be applied to any land within the local government's jurisdiction provided that residential is an allowable use on the receiving land and that the overall density of the receiving land does not exceed six dwelling units per gross acre.

(4) The density bonus, identification of receiving land for the bonus, and any other conditions associated with the donation of the land for affordable housing are the subject of review and approval by the local government. The award of density bonus pursuant to this section, the legal description of

the land receiving the bonus, and any other conditions associated with the bonus shall be memorialized in a development agreement or other binding agreement and recorded with the clerk of court in the county where the donated land and receiving land are located.

(5) The local government, as part of the approval process, shall adopt a comprehensive plan amendment, pursuant to part II of chapter 163, Florida Statutes, for the receiving land that incorporates the density bonus. Such amendment shall be adopted in the manner as required for small scale amendments pursuant to section 163.3187, Florida Statutes, is not subject to the requirements of s. 163.3184(3)-(6), Florida Statutes, and is exempt from the limitation on the frequency of plan amendments as provided in s. 163.3187, Florida Statutes.

(6) The deed restrictions required pursuant to subsection (1) for an affordable housing unit must also prohibit the unit from being sold at a price that exceeds the threshold for housing that is affordable for low-income or moderate-income persons or to a buyer who is not eligible due to his or her income under chapter 420, Florida Statutes. The deed restriction may allow affordable housing units created under subsection (1) to be rented to extremely-low-income, very-low-income, low-income, or moderate-income persons.

(7) The local government may transfer all or a portion of the donated land to a nonprofit housing organization, such as a community land trust, housing authority, or community redevelopment agency, to be used for the production and preservation of permanently affordable housing.

Section 34. The Department of Community Affairs shall establish the Home Retrofit Hardening Program. The program is a competitive grant program to fund improvements to homes constructed before the implementation of the current Florida Building Code when the improvements will directly affect the ability of the home to withstand hurricane force winds and improve the home's rating for home insurance. Site-built and mobile homes are eligible for funding under this program. However, priority shall be given to low-income homeowners, as defined in s. 420.004(10), Florida Statutes, who live in wind-borne debris regions as defined in the Florida Building Code.

(1) The program shall be administered by local governments, regional planning councils, or private nonprofit agencies under the overall direction of the department. When awarding program funds, the department shall be guided by:

(a) The number of homes in need of improvement.

(b) The number of homes located within the wind-borne debris region.

(c) The number of persons who will benefit from the improvements.

(d) The number of extremely-low-income and low-income households that will benefit from the improvements.

(e) The costs per home to provide improvements.

(2) Funds may be used for the following improvements installed in compliance with Blueprint for Safety standards:

(a) Roof deck attachments.

(b) Secondary water barriers.

(c) Roof coverings.

(d) Brace gable ends.

(e) Reinforcement of roof-to-wall connections.

(f) Opening protection.

(g) Exterior doors.

(3) Each project grant for an individual home retrofit may not exceed $10,000.

(4) Administrative costs shall be kept to a minimum.

(5) Grantees are encouraged to leverage grant funds available under this program with other available funds. Matching funds for a project is not a requirement. However, matching funds from other available sources may be considered by the department in the competitive-review process.

(6) The sum of $50 million is appropriated from the U.S. Contributions Trust Fund to the Department of Community Affairs in fixed capital outlay for the Home Retrofit Hardening Program. No more than 5 percent of the funds provided under this section may be used by the department for administration of this funding.

Section 35. The Department of Community Affairs shall establish the Disaster Recovery Assistance Program which shall be a grant program to fund repairs and rehabilitation to homes in communities severely impacted by the 2004 and 2005 hurricanes. These funds shall be leveraged with other program funds targeted to the most vulnerable citizens of the state. The sum of $2 million is appropriated in fixed capital outlay from the State Housing Trust Fund in the Department of Community Affairs for the Disaster Recovery Assistance Program. For the purposes of implementing this section, the Florida Housing

Finance Corporation is provided nonoperating budget authority to transfer $2 million from the State Housing Trust Fund to the Department of Community Affairs.

Section 36. The Florida Housing Finance Corporation is authorized to provide funds to eligible entities for affordable housing recovery in those areas of the state which sustained housing damage due to hurricanes during 2004 and 2005. The Florida Housing Finance Corporation shall utilize data provided by the Federal Emergency Management Agency to assist in its allocation of funds to local jurisdictions. To administer these programs, the Florida Housing Finance Corporation should be guided by the "Hurricane Housing Work Group Recommendations to Assist in Florida's Long Term Housing Recovery Efforts," report dated February 16, 2005, and may adopt emergency rules pursuant to s. 120.54, Florida Statutes. The Legislature finds that emergency rules adopted pursuant to this section meet the health, safety, and welfare requirement of s. 120.54(4), Florida Statutes. The Legislature finds that such emergency rulemaking power is necessary for the preservation of the rights and welfare of the people in order to provide additional funds to assist those areas of the state which sustained housing damage due to hurricanes during 2004 and 2005. Therefore, in adopting such emergency rules, the corporation need not make the findings required by s. 120.54(4)(a), Florida Statutes. Emergency rules adopted under this section are exempt from s. 120.54(4)(c), Florida Statutes. The sum of $15 million is appropriated from the Local Government Housing Trust Fund to the Florida Housing Finance Corporation for the Hurricane Housing Recovery Program.

There is appropriated from the State Housing Trust Fund to the Florida Housing Finance Corporation the sum of $25 million for the Farmworker Housing Recovery Program and the Special Housing Assistance and Development Program, the sum of $400,000 for technical and training assistance, and the sum of $176.6 million for the Rental Recovery Loan Program.

Section 37. The sum of $82,904,000 is appropriated from the Florida Small Cities Community Development Block Grant Program Fund to the Department of Community Affairs. These funds shall be used consistent with the Federal Register, Vol. 71, No. 29, February 13, 2006, Docket No. FR-5051-N-01 and the Action Plan for Disaster Recovery approved by the United States Department of Housing and Urban Development to meet the needs of communities impacted by Hurricanes Wilma and Katrina, with a prioritization toward affordable housing in the most impacted areas of the state.

Section 38. The sum of $50 million is appropriated from the Local Government Housing Trust Fund to the Florida Housing Finance Corporation for fiscal year 2006-2007 to implement the Community Workforce Housing Innovation Program created in s. 420.5095, Florida Statutes.

Section 39. The sum of $33 million is appropriated from the Local Government Housing Trust Fund to the Florida Housing Finance Corporation for fiscal year 2006-2007 to assist in the production of housing units for extremely-low-income persons as defined in s. 420.0004(8), Florida Statutes.

Section 40. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7077 CS PCB TR 06-04 Transportation
SPONSOR(S): Transportation Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Transportation Committee	14 Y, 1 N	Pugh	Miller
1) Transportation & Economic Development Appropriations Committee	15 Y, 1 N, w/CS	McAuliffe (BJP)	Gordon
2) State Infrastructure Council		Pugh	Havlicak (RH)
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 7077 w/CS is an omnibus bill that addresses a variety of transportation financing, planning, and administrative issues. Among its key provisions, the proposed legislation:

- Raises the Turnpike Enterprise's revenue bond cap from $4.5 billion in bonds issued to $6 billion in bonds outstanding. This change not only gives the Turnpike Enterprise more immediate bond capacity, but creates a line of credit, so to speak, to issue more bonds as the Turnpike pays down its balance.
- Makes numerous administrative, organizational and technical changes to the metropolitan planning organizations.
- Stiffens penalties for motorists who speed through toll plazas without paying tolls and those who purposely obscure their vehicles' license plates.
- Creates the Osceola County Expressway Authority.
- Creates environmental permitting exemptions for certain small-scale transportation projects with minimal adverse impacts.
- Modifies the membership of the Miami-Dade County Expressway Authority and imposes new noticing requirements before the authority can set new toll rates.
- Directs the Florida Department of Transportation to study the impacts that slot-machine gambling at pari-mutuel facilities and Indian reservations may have on nearby access roads and other transportation facilities, with the report due to the Governor and the Legislature by January 15, 2007.
- Modifies the Charter County Transit System Surtax to include all counties; broadens the surtax's uses; and provides a formula for counties to share the surtax proceeds with municipalities.
- Allows the Orlando-Orange County Expressway Authority to set a performance bond waiver cap of $500,000 for public projects, up from the $200,000 contract cap currently in law, to promote its small-business contractor program.

HB 7077 w/CS does not raise any apparent constitutional or legal issues. The bill does not have a negative fiscal impact on the state. The legislation takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: Several provisions in HB 7077 w/CS implicate this principle, in varying ways. Section 19 creates the Osceola County Expressway Authority, which has the power to issue revenue bonds and to impose tolls. Sections 21 and 24-26 reduce environmental regulatory hurdles for certain transportation projects. Sections 27 and 28, respectively, reduce the membership of the Miami-Dade County Expressway Authority (MDX) and impose new noticing requirements prior to the MDX raising tolls.

B. EFFECT OF PROPOSED CHANGES:

Florida Turnpike Bond Cap

Current Situation

A part of the Florida Department of Transportation (FDOT), the Florida Turnpike Enterprise is a 450-mile system of limited-access toll highways. The turnpike's 2006-2010 Work Program is funded largely through revenue bonds, backed by toll revenues. According to FDOT staff, every $1 in recurring toll revenues from the Turnpike can be leveraged to generate $14 to pay for project costs.

Section 338.227, F.S., authorizes FDOT to issue bonds to pay all or a part of legislatively approved turnpike projects, and section 338.2275, F.S., limits the total amount of bonds that may be issued to $4.5 billion. According to FDOT, nearly $2.336 billion in Turnpike bonds have been issued over the years, leaving $2.164 billion within the statutory cap to be authorized. However, the Turnpike's long-range project plan through FY 2010-2011 indicates that the estimated costs of the projects exceed the statutory bond cap by approximately $950 million.

Section 339.135(3), F.S., requires FDOT to base its Five-Year Work Program on a "complete, balanced financial plan." To comply with the law, the Turnpike will have to either eliminate or scale back proposed projects, adopt a "pay-as-you go" approach to financing future projects, or seek a change in law to raise the bond cap.

Current Turnpike projects include completion of the Western Beltway, Part C; adding 150 lane miles through widening of the Turnpike System at a cost of nearly $1 billion; adding four new interchanges and improving three other interchanges at a cost of $200 million to improve access to the Turnpike System; and converting the Sawgrass Expressway to a fully electronic, open-road tolling facility and adding SunPass Express lanes at other locations.

Projects proposed for the Turnpike's 2007-2011 Work Program – if the bond cap is increased – include nearly $370 million for additional lanes on various sections of the Homestead Extension-Florida Turnpike (HEFT) and $467 million for additional lanes along the Turnpike Mainline and the Veterans Expressway.

Potential future projects under review by Turnpike staff include another phase of the Suncoast Parkway; extensions of the Polk Parkway, State Road 417 in Volusia County, and the Sawgrass Expressway in Broward County to link with I-95; express lanes on the HEFT and the interstates; and the Port of Miami tunnel.

Effect of Program Changes

FDOT proposes raising the cap on Turnpike bonds from $4.5 billion to $6 billion, and changing the limitation to a maximum amount outstanding, thereby providing for a "line of credit" that the Turnpike can utilize for long-term planning.

According to FDOT staff, this cap increase will allow the Turnpike to complete currently planned projects and to continue an aggressive approach to building tolled facilities to handle future transportation needs.

Any increase in the bond cap will not impact the state of Florida's debt affordability index, because Turnpike bonds are revenue bonds, backed by toll collections, and do not pledge the full faith and credit of the state.

Florida Turnpike/Expressway Authority Traffic Enforcement Issues

Current Situation

Section 316.1001, F.S., specifies that persons who use a toll facility without paying a toll (unless otherwise exempted) are guilty of a noncriminal traffic infraction, punishable as a moving violation. Pursuant to chapter 318, F.S., if the citation is not paid in a timely fashion, then the matter is forwarded to the courts. Violators are subject to points being assessed on their driver's licenses.

Florida's uniform traffic code and motor vehicle registration laws also include requirements for proper placement and appearance of vehicle license plates, to make it easier for law enforcement officers to quickly identify tag numbers of vehicles involved in criminal activity.

The Florida Turnpike and the expressway authorities are reporting an upswing in the numbers of motorists – particularly repeat offenders -- speeding through toll plazas without paying tolls or without transponders. The Turnpike and the Tampa-Hillsborough County Expressway Authority reported at least $16 million in lost toll revenues in FY 2004-2005, while the Orlando-Orange County Expressway Authority (OOCEA) reported a $6 million loss.

These agencies also reported spending more money last fiscal year to contact and litigate toll-plaza violators than they collected. The Turnpike reported spending more than $2.5 million to collect $721,362 in unpaid toll collections, while the OOCEA spent $1.41 million to collect about $412,000.

While most of the toll plazas are equipped with cameras that photograph the license plates of motorists who speed through without paying tolls, more often these photographs are of little use to enforcement personnel because the plates are purposely obscured or mutilated, or are displayed upside down or out of the cameras' view range. The expressway authorities have learned of websites and retailers selling sprays and other materials that when applied to license tags obscure them just enough to prevent clear photographs by the toll cameras.

In December 2005, the Florida Transportation Commission passed a resolution supporting tougher penalties and fines for motorists who fail to pay tolls or obscure their license plates.

Effect of Proposed Changes

HB 7077 w/CS makes a number of changes to the traffic violation statutes to stiffen penalties and fines for toll-plaza violators and to address loopholes in the current law. For example:

- The bill amends ss. 316.650(3) and 318.14(12), F.S., to clarify that violators must pay the amount of the unpaid toll and a fine imposed by the expressway authority to the governmental entity that issued the citation within 30 days in order to avoid a court hearing and points assessed against their licenses. A motorist who fails to do this has an additional 45 days to request a court hearing or pay the civil penalty and other charges.
- The bill also amends s. 318.18(7), F.S., to specify that a violator found guilty by a judge must pay a $150 fine plus the amount of the unpaid toll to the court, which will forward $50 and the amount of the unpaid toll to the appropriate expressway authority. The remaining $100 would be distributed to the General Revenue Fund, local governments, and various trust funds, as provided in s. 318.21, F.S.
- Where adjudication is withheld or the violator pleads out before the case goes to court, the fine is $100, plus the amount of the unpaid toll. The court will forward $50 and the

amount of the unpaid toll to the appropriate expressway authority, with the remaining $50 distributed as provided in s. 318.21, F.S.
- The driver's license of any person who receives 10 convictions of s. 316.1001, F.S., within a 36-month period must be suspended for 60 days.

The bill also amends s. 320.061, F.S., to make it illegal to obscure license plates with any substance or coating that restricts their visibility or prevents a legible electronic image recording from being made. Under the legislation, the registration of plates so obscured would be revoked. Also, the Florida Attorney General may file suit against any individual or entity selling or marketing products advertised as being able to obscure license plates. These lawsuits may seek injunctive and monetary relief, punitive damages, and attorney's fees. Any lawsuit also must seek records of all sales of the product to Floridians or other entities within Florida.

Finally, the bill clarifies placement of license plates. Section 316.605(1), F.S., would be amended to specify that:

- License plates must be secured to the main body of a vehicle no higher than 60 inches and no lower than 12 inches from the ground, and
- License plates must be affixed to a vehicle so that its letters and numerals shall be read from left to right, parallel to the ground. This means that license plates can't be attached upside down, vertically, or in reverse position.

Osceola Expressway Authority

Current Situation

Nine expressway authorities have been created in chapter 348, F.S., by the Florida Legislature. A tenth, the Miami-Dade County Expressway Authority, was created by the Miami-Dade County Commission pursuant to the process in Part I of Chapter 348, F.S. Their purpose is to construct, maintain, and operate tolled transportation facilities that complement the State Highway System and the Florida Turnpike Enterprise. Bonds issued for expressway projects must comply with state constitutional requirements. The expressway authorities have boards of directors that typically include a combination of local-government officials or residents and Governor appointees who decide on projects and expenditure of funds.

There also are four regional transportation authorities created in chapter 343, F.S., and one local transportation authority, the Jacksonville Transportation Authority, created in chapter 349, F.S.

Osceola County is in one of the fastest-growing regions of the state, and local officials and developers have expressed interest the last two years in partnering to improve transportation infrastructure there. Supporters of creating the expressway authority have mentioned a 6.5-mile-long toll road in the western part of the county as one project. This toll road would link Marigold Avenue in the Poinciana community in Osceola with U.S. 17 and County Road 54 in Polk County.

Effect of Proposed Changes

HB 7077 w/CS proposes creating the "Osceola County Expressway Authority," modeled in many respects to existing authorities with standard "boiler-plate" language about the process to issue bonds, protection of bondholders, and relationships with FDOT.

Pursuant to the legislation:

- The expressway authority would have a six-member governing board, of which five would be voting members. The board's voting members would be comprised of three residents of Osceola County appointed by the Osceola County Commission and two Osceola County residents appointed by the Governor. The FDOT District 5 Secretary would serve as an ex-officio, non-voting member. No Authority member may be an officer or employee of Osceola County.

- The members shall serve 4-year terms, except that the Governor's initial appointees shall serve 2-year terms.
- The board members would serve without compensation, but be eligible to receive per diem and other travel expenses pursuant to s. 112.061, F.S.
- The board can hire an executive director and other staff.
- The Authority can issue revenue bonds, either on its own or through the state Division of Bond Finance. In both cases, the bonds and the issuance process must conform to State Bond Act requirements. These bonds' term may not exceed 40 years, and can not pledge the full faith and credit of the state of Florida.
- If approved by the Osceola County Commission, the Authority may pledge a portion of county gasoline tax revenues to repay the revenue bonds. The Authority must reimburse the county for any gas tax revenues it spends.
- The Authority is allowed to set and collect tolls, fees, and other charges; acquire land by purchase, donation, or eminent domain; borrow money; to sue and be sued; and enter into contracts, agreements, and partnerships with public and private entities.
- The Authority may construct, operate, and maintain roads, bridges, and other transportation facilities outside of Osceola County with the consent of the county within whose jurisdiction these projects are located.
- Likewise, the Authority may not acquire right-of-way for a project within unincorporated Osceola County until the County Commission has approved the project's route.
- The Authority may enter into lease-purchase agreements with FDOT to manage the system. FDOT also may be appointed by the Authority as its agent to oversee construction of the system's components.
- FDOT is authorized to spend up to $375,000 of its funding for the Authority's operating costs, and to conduct traffic surveys, preliminary engineering studies, and similar initial activities for the expressway system.

Other Turnpike/Expressway Issues

HB 7077 w/CS proposes a number of changes to the sections of law related to the Miami-Dade County Expressway Authority (MDX); the Orlando-Orange County Expressway Authority (OOCEA); the expanded use of transponders; and the Florida Turnpike budget. HB 7077 makes the following changes:

MDX:

- Currently, an expressway authority in a county defined in s. 125.11(1), F.S., (which applies only to MDX) can have up to 13 voting members: seven appointed by the County Commission; five appointed by the Governor; and the final member being the FDOT District 6 secretary. MDX has powers similar to those of all the other expressway authorities created in law, including the power to levy tolls on its transportation facilities.

  HB 7077 w/CS would reduce the authority board to a maximum of seven voting members, with the chair of the Miami-Dade legislative delegation, or designee, and the FDOT District 6 secretary as non-voting members The new voting membership would be comprised of: two Miami-Dade county commissioners appointed by the commission chair; one member may be a mayor of a municipality within the county and appointed by the Miami-Dade County League of Cities; and four Governor appointees.

  The legislation also would require MDX, prior to raising tolls, to publish a notice of intent in a newspaper of general circulation, as defined in s. 97.021(16), F.S., specifying the amount of the increase. The notice must be published twice, at least seven days apart, with the first notice published no more than 90 days from the effective date of the toll increase and the second publication not less than 60 days prior to the effective date. These provisions do not apply to toll increases approved by the authority prior to this legislation becoming law.

OOCEA

- Currently, OOCEA has a program that seeks to encourage Orlando-area small-business owners to bid on components of expressway authority projects. In its eight years' of existence, the so-called "micro-contract" program has attracted more than 100 small companies to perform such tasks as erecting guard rails, installing landscaping, and striping toll roads. One of the benefits of the program to small businesses has been the waiver of a performance bond for project contracts of $200,000 or less. This waiver is available to all state agencies, pursuant to s. 255.05, F.S. Persons or entities awarded public contracts greater than $200,000 must post a surety bond to guarantee the work will be performed to the state agency's specifications.

  The recent unprecedented increases in transportation construction materials and labor in Florida has increased the bids for these micro-contracts, according to OOCEA staff. As a way to save the popular program, the OOCEA is proposing amending s. 348.754, F.S., which specifies the OOCEA's purposes and powers, to raise to a maximum $500,000 the contract threshold for a performance-bond waiver for OOCEA contractors only.

  The proposal also limits participation in the program to independent businesses principally headquartered in the Orange County Standard Metropolitan Statistical Area and employing a maximum of 25 persons. Eligible businesses also must have gross annual construction sales averaging $3 million or less over the previous three calendar years; be accepted into OOCEA's economic-development program; and participate in OOCEA technical assistance or other educational programs. Any small business which has been the successful bidder on six micro-contracts is ineligible to continue participating in the program.

Toll Transponders

- Section 338.161, F.S., allows FDOT and the Turnpike to spend funds for marketing its Sun Pass transponders, and to receive funds from advertising placed on its transponders and promotional materials to defray costs. Expressway authorities, which also sell transponders to their customers, do not have similar statutory authority.

  Current law does not address potential uses of transponders other than for toll collection, although the Turnpike and the OOCEA have been allowing their customers to pay for parking at the Orlando International Airport from their transponder accounts. According to the OOCEA, about 28 percent of all airport parking lot users there pay with a SunPass or E-Pass transponder.

  HB 7077 w/CS amends s. 338.161, F.S., to extend to expressway authorities the ability to market their transponders. It also would specifically allow expressway authorities and FDOT and the Turnpike to enter into agreements with private or public entities to expand the uses of their transponders. Attorneys for the Turnpike and expressway authorities have said such express statutory permission is necessary so that future contracts to expand the use of transponder accounts are on firm legal ground.

Turnpike Budget

- In 2005 the Legislature revised several technical provisions in statute related to state budget requirements and deadlines. One of these revisions changed the roll-forward date of certified undisbursed funds in FDOT's accounts from December 31 of each year to September 30 of each year. Advancing the roll-forward date gives FDOT budget staff more information about these funds as they are preparing the agency's Legislature Budget Request in the fall. However, the Turnpike's budget process is in a different section of law than is FDOT's, and was overlooked last year.

  HB 7077 w/CS amends s. 338.2216, F.S., to correct the oversight and conform the Turnpike's roll-forward budget date to FDOT's budget process.

Public-private partnerships

- Currently, s. 348.0004(9), F.S., in Part I of the chapter, allows any expressway authority to solicit proposals from private companies wishing to enter into partnership agreements for the purpose of building, financing, operating, or owning toll facilities. No such partnership has been consummated, although the Tampa-Hillsborough Expressway Authority has advertised for proposals from private entities to help finance, design, and build a 3-mile-long, four-lane tolled highway linking Tampa Palms with I-275. The deadline for submitting proposals is May 8, 2006.

  The authority's attorneys have questioned whether the existing law is clear that any expressway authority, and not just those created pursuant to Part I of chapter 348, F.S., can participate in the public-private partnerships. To address those concerns, HB 7077 w/CS amends s. 348.0004(9), F.S., to say that "notwithstanding any law to the contrary, any expressway authority, transportation authority, bridge authority, or toll authority established either by statute or pursuant to Part I, chapter 348, F.S.," may enter into these partnerships.

M.P.O. Issues

Current Situation

As established by 23 U.S.C. s. 134 , Metropolitan Planning Organizations (M.P.O.'s) are directed to develop, in cooperation with state officials, transportation plans and programs for urbanized areas of more than 50,000 persons. The process for developing such plans and programs must provide for the consideration of all modes of transportation and "shall be continuing, cooperative, and comprehensive" to the degree appropriate based on the complexity of the transportation problems. The plans also must emphasize projects that serve an important national, state or regional transportation purpose.

Pursuant to s. 339.175, F.S., M.P.O.'s in cooperation with the state and public transit operators develop multi-year "transportation improvement plans," or TIPs, that are the building blocks for FDOT's statewide Five-Year Work Program. Besides the TIPs, the M.P.O.'s also develop long-range transportation plans ranging over 20 years and an annual "unified planning work program" that lists all the planning tasks each M.P.O. will undertake that fiscal year.

An M.P.O. must be designated for each urbanized area of the state. Such designation must be accomplished by agreement between the Governor and units of general-purpose local government representing at least 75 percent of the population of the urbanized area. Each M.P.O. must be created and operated pursuant to an interlocal agreement entered into pursuant to s. 163.01, F.S. Currently, Florida has 26 M.P.O.'s. These boards consist of local elected officials and appropriate state agencies, and may also include officials of public agencies that administer major modes of transportation within the metropolitan area.

In recent years, as the Legislature has instituted transportation policy directives focusing on regional planning and transportation infrastructure improvements, the section of law governing M.P.O.'s responsibilities in Florida has been criticized as internally inconsistent and unclear as to the entities' precise responsibilities and their degree of independence.

Effect of Proposed Changes

HB 7077 w/CS amends s. 339.175, F.S., and other sections of law to bring clarity and uniformity to M.P.O.'s administrative structure, powers and duties, and general responsibilities. For example, one criticism has been that some M.P.O.'s cannot fully embrace regional planning approaches because they, or their staffs, are not as independent as they should be from county and city governments.

The bill amends chapters 112 and 121, F.S., to clarify that M.P.O.'s are separate legal entities independent from the local governing body; allow M.P.O. staff to participate in the Florida Retirement System; designate each M.P.O.'s executive director or staff director as a member of the Senior Management Service class; and allow M.P.O.'s to establish per diem and travel reimbursement rates.

It also amends s. 339.175(5), F.S., to clarify that an M.P.O.'s executive director reports directly to his or her M.P.O. Governing Board, and that the executive director and staff are employed by the M.P.O., or through a staff services agreement between the MPO and another governmental entity. In addition, the legislation makes it clear that M.P.O. staff work for the M.P.O., and not for any of the member cities or counties.

HB 7077 w/CS also amends s. 339.175(1) and (2), F.S., to address a number of membership issues. The bill:

- Directs each M.P.O. to select a chair, vice chair, and clerk;
- Specifies the officers' responsibilities;
- Requires each M.P.O. to provide training on the urbanized transportation planning process to all who serve as members;
- Clarifies that voting members shall exclude constitutional or charter officers;
- Establishes a process by which alternate members are selected;
- Directs M.P.O.'s to appoint nonvoting representatives of various multi-modal organizations, who are not otherwise represented by voting members; and
- Directs M.P.O's to appoint representatives of major military installations as non-voting advisors if requested by the bases.

Additionally, the bill gives, or at least clarifies, M.P.O. powers common to many other types of independent boards with budgets, such as the authority to: sell, donate, dedicate, or convey property; appropriate funds; receive grants-in-aid; enjoy sovereign immunity; incur debt; hire staff, including legal counsel; acquire buildings; and have all powers provided for under federal law.

Current law requires roll-call votes of all members present in order to adopt or update certain plans. HB 7077 w/CS amends s. 339.175(12), F.S., to provide for a supermajority roll-call vote, or a hand-counted vote of a majority-plus-one, of the membership present to adopt transportation plan amendments affecting projects in the first three years of such plans. This change is related to the provision in s. 339.135(4)(b)3., F.S., that the first three years of FDOT's adopted work program is the state's commitment to undertake transportation projects that local governments may rely on for planning and concurrency purposes.

Finally, HB 7077 w/CS amends s. 339.175(5), F.S., to specify that contiguous M.P.O.'s must develop a report on regional planning actions and accomplishments. The report must be transmitted to each M.P.O.'s local legislative delegation by February of each even-numbered year. This is intended to document regional planning accomplishments, and to improve communication between M.P.O.'s and their local legislative delegations.

Local Transportation Funding Issues

Current Situation

Local governments have been receiving a share of gas tax revenues since 1971. Today, there are several local fuel taxes, some of them optional and requiring either voter approval or majority vote of the local governing board.

Over the years, the Legislature has created opportunities for county and city governments to levy additional sales taxes or surtaxes, upon voter approval, to pay for large or expensive infrastructure projects. One such funding mechanism is the Charter County Transit System Surtax, created in 1976 by the Legislature to finance development, construction, and operation of fixed guideway, rapid transit systems in charter counties. Imposition of the surtax under current law requires voter approval.

This section of law has been amended several times since it was created, so that currently only counties that adopted a charter prior to January 1, 1984, may seek to levy a maximum 1 percent sales surtax, after voter approval, to finance a variety of transportation infrastructure as well as operation and maintenance of public bus systems.

Seven counties are eligible to levy the surtax: Broward, Duval, Hillsborough, Miami-Dade, Pinellas, Sarasota and Volusia. Only two have levied the surtax: Duval since 1989 and Miami-Dade since 2003. Each county levies a half-cent sales surtax. According to the state Department of Revenue, in FY 2004 the surtax in those two counties generated $194.3 million.

Some county and city officials in recent years have expressed an interest in having the surtax eligibility broadened beyond charter counties, commenting that a surtax on sales appears more palatable to taxpayers than raising fuel taxes. They also have cited rising costs of transportation construction materials and labor, the state's new emphasis on regional transportation solutions, and required local matches for new state transportation funding programs as reasons they support broadening the surtax.

Effect of Proposed Changes

HB 7077 w/CS amends 212.055(1), F.S., to rename the Charter County Transit System Surtax as the "County Transportation System Surtax." It deletes the requirement that only certain charter counties can levy the surtax. It also expands the surtax revenues' uses to include:

- Funding a regional transportation project identified in regional plans by M.P.O.'s, pursuant to s. 339.155(5), F.S.;
- As the local match for the new Transportation Regional Incentive Program, pursuant to s. 339.2819, F.S., or the New Starts transit program, pursuant to s. s. 341.051, F.S.;
- Certain capital improvement projects and concurrency projects identified in local comprehensive plans; and
- Funding bicycle and pedestrian paths.

The maximum 1-percent surtax could be levied after the adoption of a local ordinance by the county commission and passage of a referendum. HB 7077 w/CS also includes a distribution formula, per interlocal agreement, so that counties can share the funds with municipalities. The formula takes into account population and centerline miles in the counties and cities.

Other Transportation Issues

HB 7077 w/CS includes a number of other transportation-related issues. Briefly:

Florida Transportation Commission

Currently, the four employees of the Florida Transportation Commission, the governor-appointed board that provides oversight of FDOT and makes transportation policy recommendations to the Governor and Legislature, are classified as Selected Exempt Service personnel for the purposes of salary and benefits.

HB 7077 w/CS specifies that the salary and benefits of the commission's executive director position shall be based on the Senior Management Service classification, and the rest of the commission's employees shall remain in the Selected Exempt Service classification.

Transportation Impacts of Slot Machine Gaming

During the 2005 regular and special sessions, legislation implementing a 2004 constitutional amendment allowing slot machine gambling in certain facilities in Broward and Miami-Dade counties included discussions on how to address transportation infrastructure impacts.

HB 7077 w/CS includes a proposal for an FDOT study of slot-machine gaming impacts on public highways and other transportation facilities. The proposal directs FDOT to conduct a study and draft a report of the impacts that slot machine gaming at pari-mutuel facilities and on Indian reservation lands are having on public roads and other transportation facilities, traffic congestion and other mobility issues, facility maintenance and repair costs, emergency evacuation readiness, costs of potential future widening or other improvements, and other impacts on the motoring, non-gaming public.

Due January 15, 2007, the report must include the following information:

- a listing, description, and functional classification of access roads;
- identification of those access roads that are scheduled for improvements within FDOT's Five-Year Work Program or a long-range transportation plan;
- recent traffic counts on the access roads and projected future usage, as well as projections of impacts on secondary, feeder, or connector roads, interstate highway exit and entrance ramps;
- safety and maintenance ratings of each access road and impacts on local and state emergency or evacuation services;
- the estimated infrastructure costs to maintain, improve, or widen access roads, based on future projected needs; and
- the feasibility of implementing or raising tolls on access roads to offset and mitigate traffic impacts and to finance projected future improvements.

FDOT also may include proposed legislation in the report, which must be submitted to the Governor and the Legislature.

Environmental Permitting Process

Part IV of chapter 373, F.S., regulates the management and storage of surface waters and stormwater runoff. The Florida Department of Environmental Protection (FDEP) and the five water management districts (WMDs) representing the state's five major watersheds or basins issue permits regulating public- and private-sector projects that impact wetlands, lakes, and other water bodies. Section 373.406, F.S., lists a number of exemptions from the required permits; typically these exemptions are for activities that have minimal negative impacts to the environment, or whose impacts are being mitigated by best-management practices.

FDOT is not exempt from this permitting process. Currently, even small-scale transportation activities, such as shoring up highway shoulders, adding bike lanes to existing highways, replacing bridges in the same "foot-print," and other safety improvements, are required to undergo the same environmental permitting requirements and meet many of the same standards as large-scale transportation projects.

HB 7077 w/CS amends several sections in Part IV, chapter 373, F.S., related to surface water permits. The bill creates exemptions for small-scale state transportation projects or activities, as defined in 373.4146, F.S. It also specifies that state transportation projects of less than five acres of wetlands impact may obtain general permits, rather than the more time-consuming individual permits.

The legislation also directs FDOT, FDEP, and the WMDs to develop three memoranda of understanding (MOU) within the next 30 months to address specific environmental issues. By January 1, 2007, an MOU governing the use of sovereign submerged and other state-owned lands for state transportation projects must be developed, as well as an MOU directing FDOT, FDEP, and the WMDs to develop a method for determining seasonal high-groundwater table elevation for state transportation projects. By July 1, 2008, the agencies must develop an MOU containing best management practices to handle roadway stormwater runoff.

Use of Recycled Materials

Section 336.044, F.S., created in 1988, directs FDOT to expand its usage of rubber tires, ash residue, recycled plastic, construction steel, and glass in construction projects, and to revise its rules and contract and bid specifications to eliminate any barriers to the use of recycled materials in transportation projects, where appropriate. FDOT is complying with the statute.

Under HB 7077 w/CS, the existing section of law is moved to s. 334.70, F.S. Chapter 334, F.S., deals with FDOT administration issues, and is a more appropriate location for this section than Chapter 336, F.S., which deals with the County Road System.

The bill also adds gypsum to the recycled materials that FDOT may use in demonstration projects to determine whether it is suitable for highway construction.

Gypsum is a naturally occurring inorganic compound that has many commercial uses (such as plaster paneling in home construction, as plaster of Paris for art projects and surgical splints, as a thickening agent for tofu and flour, and as a cleaning agent in toothpaste). Gypsum also is a byproduct of the chemical processes that turn phosphate rock into phosphoric acid, which is a key ingredient in fertilizer and other products.

Florida mines about 30 percent of the world's phosphate, 90 percent of which is turned into phosphoric acid. Creating 1 ton of phosphoric acid also creates a byproduct of nearly 5 tons of this phosphogypsum, which under federal regulation is stored in huge stacks near the mining and chemical operations that create it. This phosphogypsum has limited uses in the United States because of concerns of its naturally occurring amount of radiation. Typically, it is used in this country as an agricultural soil additive, but research indicates that it might have acceptable uses as road-bed filler and landfill cover, depending on its level of radiation. The state of Texas is experimenting with a mixture of phosphogypsum and Portland cement as roadbed aggregate. In Europe and Japan, phosphogypsum is recycled for use in building materials.

General Aviation Airport Funding Match

Florida has at least 83 general aviation, or community, airports that provide a number of aviation-related services to their communities, but do not offer scheduled commercial flights.

State law allows FDOT to provide half of the local share of general aviation airport (GAA) project costs when federal funding is available as a 50-percent federal/50-percent local match. But many small GAAs and their local governments can't afford to pay the required 25-percent local match, according to FDOT staff, so the federal grant is rejected. Those funds then are likely spent in another state. If the GAA project is a priority, FDOT pays the majority of the cost from state aviation funds.

HB 7077 w/CS amends s. 332.007, F.S., to allow FDOT to apply federal GAA grant funds to an eligible project, then split the remaining cost on an 80-percent state/20-percent local matching basis. This would enable the state to draw down more federal aviation grant funding, and free up state aviation funding for other projects.

Effective date

HB 7077 takes effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Amends s. 112.061, F.S., to allow MPO's to set travel, per diem, subsistence, and mileage rates in excess of statutory maximums for non-state travelers.

Section 2: Amends s. 121.021, F.S., to add MPO's to the definitions of "local agency employer" and "regularly established position" for the purpose of ensuring that MPO employees are considered public employees eligible for participation in the Florida Retirement System.

Section 3: Amends s. 121.051, F.S., to add MPO's to the list of local governmental entities that may choose to have its employees participate in the Florida Retirement System.

Section 4: Amends s. 121.055, F.S., to add the executive director or staff director of each MPO to the list of public employees included in the "Senior Management Service Class."

Section 5: Amends s. 121.061, F.S., to add MPO's to the list of governmental entities that may deduct from public funds due a non-state employer any unpaid retirement system contributions. Allows MPO's to file suit to require any employer to remit the required retirement and Social Security contributions.

Section 6: Amends s. 121.081, F.S., to allow MPO employees to claim past service credits for the purposes of participating in the Florida Retirement System.

Section 7: Amends s. 316.605, F.S., to establish placement and display requirements for vehicle license plates.

Section 8: Amends s. 316.650, F.S., to specify that motorists who use tolled highways without paying the required tolls have the option to pay the tolling authority's fine and the unpaid toll, and the traffic citation is dropped and no points are assessed.

Section 9: Amends s. 318.14, F.S., to specify that motorists who use tolled highways without paying the required tolls can elect to pay the unpaid toll and the tolling authority's fine, or if not, have 45 days to either request a court hearing or to pay the specified fines.

Section 10: Amends s. 318.18, F.S., to raise the fine for motorists who fail to pay required tolls from $100 to $150. Specifies that if adjudication is withheld or a plea is entered prior to a court hearing, the fine is $100. Specifies distribution of fine proceeds. Specifies 60-day suspension of driver's license for motorists with 10 toll violations.

Section 11: Amends s. 320.061, F.S., to specify illegality of obscuring license plates with certain substances or products. Prohibits advertising, sale, distribution, purchase and use of such substances or products. Specifies law enforcement officers may issue citations to drivers whose plates are obscured and can confiscate the plates. Specifies that the Florida Attorney General may file suit against an entity or person involved in the sale and marketing of obscuring substances and products. Provides for injunctive relief, fines, and other penalties.

Section 12: Renumbers s. 336.044, F.S., as s. 334.70, F.S., related to FDOT's use of recycled materials in transportation construction projects. Adds gypsum to the recycled materials that FDOT may use in demonstration projects to determine their viability.

Section 13: Amends s. 338.161, F.S., to allow the Florida Turnpike and other tolling agencies to market their electronic toll-collection devices and to enter into contracts with private or public entities to provide for additional uses of those devices on- or off-system.

Section 14: Amends s. 338.2216, F.S., to change the certified roll-forward date of unexpended Florida Turnpike funds from December 31 to September 30 of each year.

Section 15: Amends s. 338.2275, F.S., to change the Florida Turnpike's bond cap to $6 billion of bonds outstanding.

Section 16: Amends s. 339.175, F.S., related to M.P.O.'s. Establishes officers; clarifies eligibility of certain elected officials to serve on M.P.O.'s; directs M.P.O.'s to appoint non-voting members representatives of transportation modes not otherwise serving on their boards; lists M.P.O.'s powers and duties; requires M.P.O.'s to submit progress report to their local legislative delegations; makes numerous technical changes.

Section 17: Amends s. 20.23, F.S., to switch the Florida Transportation Commission's executive director position from the Selected Exempt Service class to the Senior Management Service class..

Section 18: Amends s. 332.007, F.S., to give FDOT more flexibility to match federal grants for general aviation airports.

Section 19: Creates the Osceola Expressway Authority with specific powers and duties, membership requirements, and bonding authority.

Section 20: Amends s. 373.036, F.S., to correct a cross-reference.

Sections 21-26: Amends various sections in Part IV of chapter 373, F.S., to exempt certain small-scale transportation projects meeting certain criteria from environmental resource permits or dredge-and-fill permits. Directs FDOT, the Florida Department of Environmental Protection, and the WMDs to enter into memoranda of understanding on the issues of: use of state-owned lands, determination of seasonal high groundwater table elevation; and highway stormwater runoff. Corrects cross-references.

Section 27: Amends s. 348.0003, F.S., to reduce membership of the Miami-Dade Expressway Authority from 13 voting members to seven voting members and two non-voting members. Specifies composition of the authority.

Section 28: Amends s. 348.0004, F.S., to create new noticing requirements for the Miami-Dade Expressway Authority for proposed toll increases. Clarifies that expressway authorities not created pursuant to Part I of chapter 348, F.S., can utilize the public-private partnership provisions in s. 348.0004(9), F.S.

Section 29: Amends s. 348.754, F.S., to allow the Orlando-Orange County Expressway Authority to increase the bond-waiver amount for small businesses meeting certain eligibility requirements for its economic-development program. Requires the Authority to conduct bond-eligibility training for qualifying businesses. Requires the Authority to prepare a report on the program every two years and submit it to the Orange County legislative delegation, beginning December 31, 2008.

Section 30: Amends s. 212.055, F.S., to rename the Charter County Transit System Surtax as the "County Transportation System Surtax." Specifies the surtax may be approved by a referendum. Specifies distribution formula of surtax proceeds to a county and its municipalities. Specifies uses of surtax proceeds. Makes technical corrections.

Section 31: Directs FDOT to conduct a study of the impacts of slot-machine gaming at pari-mutuel facilities and Indian reservations on public transportation facilities. Specifies topics to be studied. Requires FDOT to submit its findings and recommendations in a report to the Governor, the Speaker of the House of Representatives, and the President of the Senate by January 15, 2007.

Section 32: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Section 15 of the bill would raise the Florida Turnpike Enterprise's bond cap from an absolute $4.5 billion in bonds to a limit of $6 billion in bonds outstanding. Therefore, as the Turnpike retires bond issues, it may issue more, as long as it does not exceed $6 billion owed at any time.

Section 18 of the bill would give FDOT the flexibility to provide a greater share of the local match required in order to obtain more federal general aviation grant funds.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Section 30 of the bill gives all 67 counties the opportunity to levy up to 1 percent sales surtax to pay for transportation infrastructure. Additionally, the surtax revenues would be shared with the municipalities within those counties that levied the surtax. The fiscal impact is indeterminate at this time, because it is unknown how many local governments would levy in the surtax.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Legislature last raised the Turnpike bond cap in 2003, from $3 billion to $4.5 billion.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 7077 w/CS does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

FDOT, FDEP, and the WMDs appear to have sufficient existing rulemaking authority to implement the various provisions in HB 7077, should they become law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Transportation Committee

At its February 7, 2006, meeting, the House Transportation Committee adopted 10 amendments to this bill in its original form as PCB TR 06-04. A brief description of the amendments follows:

- Amendment #1 specified that the proposed new county surtax could be levied by a supermajority vote of the entire membership of a county commission, rather than by a majority vote.
- Amendment #2 added the New Starts transit program as an eligible use of the county surtax funds.
- Amendments #3 and #4 were technical changes to the provisions related to M.P.O. participation in the Florida Retirement System.

- Amendment #5 corrected a scrivener's error on the voting membership and non-voting membership of the MDX.
- Amendment #6 was a technical amendment inserting inadvertently omitted words related to fines for non-payment of tolls.
- Amendment #7 amended s. 348.0004(9), F.S., to clarify that notwithstanding any law to the contrary, any expressway authority, transportation authority, bridge authority, or toll authority, established either in statute or by local ordinance pursuant to Part I of chapter 348, F.S., could participate in public-private partnerships for transportation infrastructure.
- Amendment #8 clarified that the Transportation Commission's executive director position would be reclassified as Senior Management Service and the remaining employee positions would remain as Selected Exempt Service.
- Amendment #9 added gypsum to the recycled materials that FDOT can use in demonstration projects.
- Amendment #10 changed the $400 million, one-time expenditure of general revenue for other arterial road projects to a recurring appropriation tied to the CPI.

The committee then voted 14-1 to report PCB TR 06-04 as favorable. After it was reported out of committee, the legislation was designated by the House Clerk's Office as HB 7077.

At the April 4, 2006 meeting, the Transportation & Economic Development Appropriations Committee approved HB 7077 with three amendments. The first amendment was a technical amendment which clarified what Turnpike funds may be certified forward. The second amendment removed the provision that authorized the levy of the County Transportation Surtax by supermajority vote of the county commission. The third amendment removed the $400 million appropriation.

CHAMBER ACTION

The Transportation & Economic Development Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to transportation; amending s. 112.061, F.S.; authorizing metropolitan planning organizations and certain separate entities to establish per diem and travel reimbursement rates; amending s. 121.021, F.S.; revising the definition of "local agency employer" to include metropolitan planning organizations and certain separate entities for purposes of the Florida Retirement System Act; revising the definition of "regularly established position" to include positions in metropolitan planning organizations; amending s. 121.051, F.S.; providing for metropolitan planning organizations to participate in the Florida Retirement System; amending s. 121.055, F.S.; requiring certain metropolitan planning organization and similar entity staff positions to be in the Senior Management Service Class of the Florida Retirement System; amending s. 121.061, F.S.; providing for enforcement of certain employer funding contributions required under the

Florida Retirement System; authorizing deductions of amounts owed from certain funds distributed to a metropolitan planning organization; authorizing the governing body of a metropolitan planning organization to file and maintain an action in court to require an employer to remit retirement or social security member contributions or employer matching payments; amending s. 121.081, F.S.; providing for metropolitan planning organization officers and staff to claim past service for retirement benefits; amending s. 316.605, F.S.; providing height and placement requirements for vehicle license plates; prohibiting display that obscures identification of the letters and numbers on a license plate; providing penalties; amending s. 316.650, F.S.; revising procedures for disposition of citations issued for failure to pay toll; providing that the citation will not be submitted to the court and no points will be assessed on the driver's license if the person cited elects to make payment directly to the governmental entity that issued the citation; providing for reporting of the citation by the governmental entity to the Department of Highway Safety and Motor Vehicles; amending s. 318.14, F.S.; providing for the amount required to be paid under certain procedures for disposition of a citation issued for failure to pay toll; providing for the person cited to request a court hearing; amending s. 318.18, F.S.; revising penalties for failure to pay a prescribed toll; providing for disposition of amounts received by the clerk

of court; revising procedures for withholding of adjudication; providing for suspension of a driver's license under certain circumstances; amending s. 320.061, F.S.; prohibiting interfering with the legibility, angular visibility, or detectability of any feature or detail on a license plate or interfering with the ability to photograph or otherwise record any feature or detail on a license plate; prohibiting advertising, sale, distribution, purchase, or use of any product made for such purpose; providing penalties; providing for a law enforcement officer to issue a citation and confiscate a cover or other device obstructing the visibility or electronic image recording of a plate or to confiscate a license plate physically treated with a substance or material that is obstructing the visibility or electronic image recording of the plate; requiring the Department of Highway Safety and Motor Vehicles to revoke the registration of a plate so altered; providing for the Attorney General to file suit against any entity offering or marketing a product advertised as having the capacity to obstruct the visibility or electronic image recording of a license plate; renumbering and amending s. 336.044, F.S., relating to Department of Transportation use of recovered materials in construction programs; adding gypsum to the list of materials authorized for use in certain demonstration projects; amending s. 338.161, F.S.; providing for the Department of Transportation and certain toll agencies to enter into agreements with public or

private entities for additional uses of electronic toll collection products and services; amending s. 338.2216, F.S.; changing the carryforward date on certain undisbursed Florida Turnpike Enterprise funds; revising the maximum amount that may be carried forward; amending s. 338.2275, F.S.; raising the limit on outstanding bonds to fund turnpike projects; amending s. 339.175, F.S.; specifying that a metropolitan planning organization is a separate legal entity independent of entities represented on the M.P.O. and signatories to the agreement creating the M.P.O.; providing for transfer of responsibilities and liabilities to the new M.P.O. upon execution of a new interlocal agreement by the governmental entities constituting the M.P.O.; providing for selection of certain officers; revising requirements for voting membership; specifying certain constitutional and charter officers are not elected officials of a general-purpose local government for voting membership purposes; establishing a process for appointing alternate members; revising provisions for nonvoting advisers; revising provisions for employment of staff by an M.P.O.; providing for training of certain persons who serve on an M.P.O. for certain purposes; providing additional powers and duties of M.P.O.'s; directing M.P.O.'s to develop coordinated transportation planning processes under certain conditions; requiring a report; revising voting requirements for approval of certain plans and programs and amendments thereto; amending s. 20.23, F.S.; providing

that the salary and benefits of the executive director of the Florida Transportation Commission shall be set in accordance with the Senior Management Service; amending s. 332.007, F.S.; authorizing the Department of Transportation to provide funds for certain general aviation projects under certain circumstances; redesignating part X of chapter 348, F.S.; creating part X of chapter 348, F.S.; creating the "Osceola County Expressway Authority Law"; providing definitions; creating the authority as an agency of the state; providing for membership, terms, organization, personnel, and administration; providing purposes and powers for construction, expansion, maintenance, improvement, and operation of the Osceola County Expressway System; providing for use of certain funds to pay obligations; requiring consent of local and county jurisdiction for agreements that would restrict construction of roads; providing for bond financing of improvements to certain facilities; providing for issuance of bonds; providing for rights and remedies granted to bondholders; providing for appointment of a trustee to represent the bondholders; providing for appointment of a receiver to take possession of and operate and maintain the system; providing for lease of the system to the Department of Transportation under a lease-purchase agreement; authorizing the department to act in place of the authority under terms of the lease-purchase agreement; requiring approval by the county for certain provisions of the lease-purchase

agreement; providing that the system is part of the state road system; authorizing the department to expend a limited amount of funds; providing for the authority to appoint the department as its agent for certain construction purposes; authorizing the authority to acquire property; limiting liability of the authority for contamination existing on an acquired property; providing for remedial acts necessary due to such contamination; authorizing agreements between the authority and other entities; providing a pledge of the state to bondholders; exempting the authority from taxation; providing for application and construction of the part; amending s. 373.036, F.S.; correcting a cross-reference; amending s. 373.406, F.S.; exempting certain transportation projects from certain requirements for management and storage of surface waters; amending ss. 373.4135 and 373.4136, F.S.; correcting cross-references; amending s. 373.414, F.S.; exempting certain transportation projects and activities from specified public-interest criteria relating to surface waters and wetlands; amending s. 373.4145, F.S.; exempting certain transportation projects and activities within the geographical jurisdiction of the Northwest Florida Water Management District from certain permitting requirements; creating s. 373.4146, F.S.; specifying transportation projects and activities that are exempt from certain requirements for management and storage of surface waters; providing for application of certain requirements relating to stormwater discharge, impact

review, acreage thresholds, wetland impacts and general permits, and minimum width or acreage restrictions on stormwater treatment facilities; directing the Department of Environmental Protection, the water management districts, and the Department of Transportation to develop memorandums of understanding relating to the use of sovereign submerged lands or other state-owned lands, a method for determining the seasonal high groundwater table elevation, and best management practices to treat or minimize identified constituents of highway stormwater runoff; providing for application of the memorandums to transportation projects and activities; amending s. 348.0003, F.S.; revising the membership of expressway authority governing boards in certain counties; amending s. 348.0004, F.S.; providing for public notice of a proposed toll increase by certain expressway authorities; authorizing a transportation authority, bridge authority, or toll authority to receive or solicit proposals and enter into agreements with private entities for certain transportation facility purposes; providing for application of specified provisions to use of certain additional powers by certain expressway authorities, transportation authorities, bridge authorities, or toll authorities; amending s. 348.754, F.S.; authorizing the Orlando-Orange County Expressway Authority to waive payment and performance bonds on certain construction contracts if the contract is awarded pursuant to an economic development program for the encouragement of

local small businesses; providing criteria for participation in the program; providing criteria for the bond waiver; providing for certain determinations by the authority's executive director or a designee as to the suitability of a project; providing for certain payment obligations if a payment and performance bond is waived; requiring the authority to record notice of the obligation; limiting eligibility to bid on the projects; providing for the authority to conduct bond eligibility training for certain businesses; requiring the authority to submit biennial reports to the Orange County legislative delegation; amending s. 212.055, F.S.; renaming the Charter County Transit System Surtax as the County Transportation System Surtax; authorizing all counties to levy a discretionary sales surtax upon approval by the governing body and the electorate of the county; providing for distribution to the county and municipalities by interlocal agreement or a certain apportionment formula; providing for distribution of the surtax by certain charter counties; providing for application to certain counties in which the surtax currently exists; providing for application to existing agreements; revising authorized uses of the surtax to include bicycle and pedestrian facilities, certain transportation projects and transit programs, certain capital improvements, and concurrency management; directing the Department of Transportation to conduct a study of the access roads to pari-mutuel facilities and

Indian reservation lands where gaming activities occur; providing for content of the study; requiring a report to the Governor and the Legislature; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (14) of section 112.061, Florida Statutes, is amended to read:

112.061 Per diem and travel expenses of public officers, employees, and authorized persons.--

(14) APPLICABILITY TO COUNTIES, COUNTY OFFICERS, DISTRICT SCHOOL BOARDS, AND SPECIAL DISTRICTS.--

(a) Rates that exceed the maximum travel reimbursement rates for nonstate travelers specified in paragraph (6)(a) for per diem, in paragraph (6)(b) for subsistence, and in subparagraph (7)(d)1. for mileage may be established by:

1. The governing body of a county by the enactment of an ordinance or resolution;

2. A county constitutional officer, pursuant to s. 1(d), Art. VIII of the State Constitution, by the establishment of written policy;

3. The governing body of a district school board by the adoption of rules; ~~or~~

4. The governing body of a special district, as defined in s. 189.403(1), except those special districts that are subject to s. 166.021(10), by the enactment of a resolution; or

5. Any metropolitan planning organization created pursuant to s. 339.175, or any separate legal or administrative entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member, by enactment of a resolution.

(b) Rates established pursuant to paragraph (a) must apply uniformly to all travel by the county, county constitutional officer and entity governed by that officer, district school board, or special district.

(c) Except as otherwise provided in this subsection, counties, county constitutional officers and entities governed by those officers, district school boards, and special districts, other than those subject to s. 166.021(10), remain subject to the requirements of this section.

Section 2. Paragraph (a) of subsection (42) and paragraph (b) of subsection (52) of section 121.021, Florida Statutes, are amended to read:

121.021 Definitions.--The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(42)(a) "Local agency employer" means the board of county commissioners or other legislative governing body of a county, however styled, including that of a consolidated or metropolitan government; a clerk of the circuit court, sheriff, property appraiser, tax collector, or supervisor of elections, provided such officer is elected or has been appointed to fill a vacancy in an elective office; a community college board of trustees or district school board; or the governing body of any city, metropolitan planning organization created pursuant to s.

339.175, or any separate legal or administrative entity created pursuant to s. 339.175, or special district of the state which participates in the system for the benefit of certain of its employees.

(52) "Regularly established position" is defined as follows:

(b) In a local agency (district school board, county agency, community college, city, metropolitan planning organization, or special district), the term means a regularly established position which will be in existence for a period beyond 6 consecutive months, except as provided by rule.

Section 3. Paragraph (b) of subsection (2) of section 121.051, Florida Statutes, is amended to read:

121.051 Participation in the system.--

(2) OPTIONAL PARTICIPATION.--

(b)1. The governing body of any municipality, metropolitan planning organization, or special district in the state may elect to participate in the system upon proper application to the administrator and may cover all or any of its units as approved by the Secretary of Health and Human Services and the administrator. The department shall adopt rules establishing provisions for the submission of documents necessary for such application. Prior to being approved for participation in the Florida Retirement System, the governing body of any such municipality, metropolitan planning organization, or special district that has a local retirement system shall submit to the administrator a certified financial statement showing the condition of the local retirement system as of a date within 3

months prior to the proposed effective date of membership in the Florida Retirement System. The statement must be certified by a recognized accounting firm that is independent of the local retirement system. All required documents necessary for extending Florida Retirement System coverage must be received by the department for consideration at least 15 days prior to the proposed effective date of coverage. If the municipality, metropolitan planning organization, or special district does not comply with this requirement, the department may require that the effective date of coverage be changed.

2. Any city, metropolitan planning organization, or special district that has an existing retirement system covering the employees in the units that are to be brought under the Florida Retirement System may participate only after holding a referendum in which all employees in the affected units have the right to participate. Only those employees electing coverage under the Florida Retirement System by affirmative vote in said referendum shall be eligible for coverage under this chapter, and those not participating or electing not to be covered by the Florida Retirement System shall remain in their present systems and shall not be eligible for coverage under this chapter. After the referendum is held, all future employees shall be compulsory members of the Florida Retirement System.

3. The governing body of any city, metropolitan planning organization, or special district complying with subparagraph 1. may elect to provide, or not provide, benefits based on past service of officers and employees as described in s. 121.081(1). However, if such employer elects to provide past service

benefits, such benefits must be provided for all officers and employees of its covered group.

4. Once this election is made and approved it may not be revoked, except pursuant to subparagraphs 5. and 6., and all present officers and employees electing coverage under this chapter and all future officers and employees shall be compulsory members of the Florida Retirement System.

5. Subject to the conditions set forth in subparagraph 6., the governing body of any hospital licensed under chapter 395 which is governed by the board of a special district as defined in s. 189.403(1) or by the board of trustees of a public health trust created under s. 154.07, hereinafter referred to as "hospital district," and which participates in the system, may elect to cease participation in the system with regard to future employees in accordance with the following procedure:

a. No more than 30 days and at least 7 days before adopting a resolution to partially withdraw from the Florida Retirement System and establish an alternative retirement plan for future employees, a public hearing must be held on the proposed withdrawal and proposed alternative plan.

b. From 7 to 15 days before such hearing, notice of intent to withdraw, specifying the time and place of the hearing, must be provided in writing to employees of the hospital district proposing partial withdrawal and must be published in a newspaper of general circulation in the area affected, as provided by ss. 50.011-50.031. Proof of publication of such notice shall be submitted to the Department of Management Services.

c. The governing body of any hospital district seeking to partially withdraw from the system must, before such hearing, have an actuarial report prepared and certified by an enrolled actuary, as defined in s. 112.625(3), illustrating the cost to the hospital district of providing, through the retirement plan that the hospital district is to adopt, benefits for new employees comparable to those provided under the Florida Retirement System.

d. Upon meeting all applicable requirements of this subparagraph, and subject to the conditions set forth in subparagraph 6., partial withdrawal from the system and adoption of the alternative retirement plan may be accomplished by resolution duly adopted by the hospital district board. The hospital district board must provide written notice of such withdrawal to the division by mailing a copy of the resolution to the division, postmarked no later than December 15, 1995. The withdrawal shall take effect January 1, 1996.

6. Following the adoption of a resolution under sub-subparagraph 5.d., all employees of the withdrawing hospital district who were participants in the Florida Retirement System prior to January 1, 1996, shall remain as participants in the system for as long as they are employees of the hospital district, and all rights, duties, and obligations between the hospital district, the system, and the employees shall remain in full force and effect. Any employee who is hired or appointed on or after January 1, 1996, may not participate in the Florida Retirement System, and the withdrawing hospital district shall have no obligation to the system with respect to such employees.

Section 4. Paragraph (l) is added to subsection (1) of section 121.055, Florida Statutes, to read:

121.055 Senior Management Service Class.--There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1)

(l) For each metropolitan planning organization that has opted to become part of the Florida Retirement System, participation in the Senior Management Service Class shall be compulsory for the executive director or staff director of that metropolitan planning organization or similar entity created pursuant to s. 339.175.

Section 5. Paragraphs (a) and (c) of subsection (2) of section 121.061, Florida Statutes, are amended to read:

121.061 Funding.--

(2)(a) Should any employer other than a state employer fail to make the retirement and social security contributions, both member and employer contributions, required by this chapter, then, upon request by the administrator, the Department of Revenue or the Department of Financial Services, as the case may be, shall deduct the amount owed by the employer from any funds to be distributed by it to the county, city, metropolitan planning organization, special district, or consolidated form of government. The amounts so deducted shall be transferred to the administrator for further distribution to the trust funds in accordance with this chapter.

(c) The governing body of each county, city, metropolitan planning organization, special district, or consolidated form of government participating under this chapter or the administrator, acting individually or jointly, is hereby authorized to file and maintain an action in the courts of the state to require any employer to remit any retirement or social security member contributions or employer matching payments due the retirement or social security trust funds under the provisions of this chapter.

Section 6. Paragraphs (a), (b), and (e) of subsection (1) of section 121.081, Florida Statutes, are amended to read:

121.081 Past service; prior service; contributions.--Conditions under which past service or prior service may be claimed and credited are:

(1)(a) Past service, as defined in s. 121.021(18), may be claimed as creditable service by officers or employees of a city, metropolitan planning organization, or special district that become a covered group under this system. The governing body of a covered group in compliance with s. 121.051(2)(b) may elect to provide benefits with respect to past service earned prior to January 1, 1975, in accordance with this chapter, and the cost for such past service shall be established by applying the following formula: The member contribution for both regular and special risk members shall be 4 percent of the gross annual salary for each year of past service claimed, plus 4-percent employer matching contribution, plus 4 percent interest thereon compounded annually, figured on each year of past service, with interest compounded from date of annual salary earned until July

1, 1975, and 6.5 percent interest compounded annually thereafter until date of payment. Once the total cost for a member has been figured to date, then after July 1, 1975, 6.5 percent compounded interest shall be added each June 30 thereafter on any unpaid balance until the cost of such past service liability is paid in full. The following formula shall be used in calculating past service earned prior to January 1, 1975: (Annual gross salary multiplied by 8 percent) multiplied by the 4 percent or 6.5 percent compound interest table factor, as may be applicable. The resulting product equals cost to date for each particular year of past service.

(b) Past service earned after January 1, 1975, may be claimed by officers or employees of a city, metropolitan planning organization, or special district that becomes a covered group under this system. The governing body of a covered group may elect to provide benefits with respect to past service earned after January 1, 1975, in accordance with this chapter, and the cost for such past service shall be established by applying the following formula: The employer shall contribute an amount equal to the contribution rate in effect at the time the service was earned, multiplied by the employee's gross salary for each year of past service claimed, plus 6.5 percent interest thereon, compounded annually, figured on each year of past service, with interest compounded from date of annual salary earned until date of payment.

(e) Past service, as defined in s. 121.021(18), may be claimed as creditable service by a member of the Florida Retirement System who formerly was an officer or employee of a

city, metropolitan planning organization, or special district, notwithstanding the status or form of the retirement system, if any, of that city, metropolitan planning organization, or special district and irrespective of whether officers or employees of that city, metropolitan planning organization, or special district now or hereafter become a covered group under the Florida Retirement System. Such member may claim creditable service and be entitled to the benefits accruing to the regular class of members as provided for the past service claimed under this paragraph by paying into the retirement trust fund an amount equal to the total actuarial cost of providing the additional benefit resulting from such past-service credit, discounted by the applicable actuarial factors to date of retirement.

Section 7. Subsection (1) of section 316.605, Florida Statutes, is amended to read:

316.605 Licensing of vehicles.--

(1) Every vehicle, at all times while driven, stopped, or parked upon any highways, roads, or streets of this state, shall be licensed in the name of the owner thereof in accordance with the laws of this state unless such vehicle is not required by the laws of this state to be licensed in this state and shall, except as otherwise provided in s. 320.0706 for front-end registration license plates on truck tractors and s. 320.086(5) which exempts display of license plates on described former military vehicles, display the license plate or both of the license plates assigned to it by the state, one on the rear and, if two, the other on the front of the vehicle, each to be

498 securely fastened to the vehicle outside the main body of the
499 vehicle not higher than 60 inches and not lower than 12 inches
500 from the ground and in such manner as to prevent the plates from
501 swinging, and all letters, numerals, printing, writing, and
502 other identification marks upon the plates regarding the word
503 "Florida," the registration decal, and the alphanumeric
504 designation shall be clear and distinct and free from
505 defacement, mutilation, grease, and other obscuring matter, so
506 that they will be plainly visible and legible at all times 100
507 feet from the rear or front. Vehicle license plates shall be
508 affixed and displayed in such a manner that the letters and
509 numerals shall be read from left to right parallel to the
510 ground. No vehicle license plate may be displayed in an inverted
511 or reversed position or in such a manner that the letters and
512 numbers and their proper sequence are not readily identifiable.
513 Nothing shall be placed upon the face of a Florida plate except
514 as permitted by law or by rule or regulation of a governmental
515 agency. No license plates other than those furnished by the
516 state shall be used. However, if the vehicle is not required to
517 be licensed in this state, the license plates on such vehicle
518 issued by another state, by a territory, possession, or district
519 of the United States, or by a foreign country, substantially
520 complying with the provisions hereof, shall be considered as
521 complying with this chapter. A violation of this subsection is a
522 noncriminal traffic infraction, punishable as a nonmoving
523 violation as provided in chapter 318.
524 Section 8. Paragraph (b) of subsection (3) of section
525 316.650, Florida Statutes, is amended to read:

316.650 Traffic citations.--

(3)

(b) If a traffic citation is issued pursuant to s. 316.1001, a traffic enforcement officer may deposit the original and one copy of such traffic citation or, in the case of a traffic enforcement agency that has an automated citation system, may provide an electronic facsimile with a court having jurisdiction over the alleged offense or with its traffic violations bureau within 45 days after the date of issuance of the citation to the violator. If the person cited for the violation of s. 316.1001 makes the election provided by s. 318.14(12) and pays the fine imposed by the toll authority plus the amount of the unpaid toll that is shown on the traffic citation directly to the governmental entity that issued the citation in accordance with s. 318.14(12), the traffic citation will not be submitted to the court, the disposition will be reported to the department by the governmental entity that issued the citation, and no points will be assessed against the person's driver's license.

Section 9. Subsection (12) of section 318.14, Florida Statutes, is amended to read:

318.14 Noncriminal traffic infractions; exception; procedures.--

(12) Any person cited for a violation of s. 316.1001 may, in lieu of making an election as set forth in subsection (4) or s. 318.18(7), elect to pay a ~~his or her~~ fine of $25, or such other amount as imposed by the toll authority, plus the amount of the unpaid toll that is shown on the traffic citation

directly to the governmental entity that issued the citation~~,~~ within 30 days after the date of issuance of the citation. Any person cited for a violation of s. 316.1001 who does not elect to pay the fine imposed by the toll authority plus the amount of the unpaid toll that is shown on the traffic citation directly to the governmental entity that issued the citation as described in this subsection ~~section~~ shall have an additional 45 days after the date of the issuance of the citation in which to request a court hearing or to pay the civil penalty and delinquent fee, if applicable, as provided in s. 318.18(7), either by mail or in person, in accordance with subsection (4).

Section 10. Subsection (7) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of civil penalties.--The penalties required for a noncriminal disposition pursuant to s. 318.14 are as follows:

(7) Mandatory $150 plus the amount of the unpaid toll shown on the traffic citation for each citation issued ~~One hundred dollars~~ for a violation of s. 316.1001. The clerk of the court shall forward $50 of the $150 fine received plus the amount of the unpaid toll that is shown on the citation to the governmental entity that issued the citation. If adjudication is withheld or there is a plea arrangement prior to a hearing, there shall be a minimum mandatory cost assessed per citation of $100 plus the amount of the unpaid toll for each citation issued. The clerk of the court shall forward $50 of the $100 plus the amount of the unpaid toll as shown on the citation to the governmental entity that issued the citation. The court

shall have specific authority to consolidate issued citations for the same defendant for the purpose of sentencing and aggregate jurisdiction. In addition, the department shall suspend for 60 days the driver's license of a person who is convicted of 10 violations of s. 316.1001 within a 36-month period. ~~However, a person may elect to pay $30 to the clerk of the court, in which case adjudication is withheld, and no points are assessed under s. 322.27. Upon receipt of the fine, the clerk of the court must retain $5 for administrative purposes and must forward the $25 to the governmental entity that issued the citation.~~ Any funds received by a governmental entity for this violation may be used for any lawful purpose related to the operation or maintenance of a toll facility.

Section 11. Section 320.061, Florida Statutes, is amended to read:

320.061 Unlawful to alter motor vehicle registration certificates, license plates, mobile home stickers, or validation stickers or to obscure license plates; penalty.--

(1) No person shall alter the original appearance of any registration license plate, mobile home sticker, validation sticker, or vehicle registration certificate issued for and assigned to any motor vehicle or mobile home, whether by mutilation, alteration, defacement, or change of color or in any other manner. Any person who violates ~~the provisions of~~ this subsection commits ~~section is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2)(a) No person shall apply or attach any substance, reflective matter, illuminated device, spray, coating, covering, or other material onto or around any license plate that interferes with the legibility, angular visibility, or detectability of any feature or detail on the license plate or interferes with the ability to photograph or otherwise record any feature or detail on the license plate. The advertising, sale, distribution, purchase, or use of any product made for the purpose of interfering with the legibility, angular visibility, or detectability of any feature or detail on a license plate or interfering with the ability to photograph or otherwise record any feature or detail on a license plate is prohibited. Any person who violates this paragraph commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If a state or local law enforcement officer having jurisdiction observes that a cover or other device is obstructing the visibility or electronic image recording of a license plate, the officer shall issue a uniform traffic citation and shall confiscate the cover or other device that obstructs the visibility or electronic image recording of the plate. If a state or local law enforcement officer having jurisdiction observes that a license plate has been physically treated with a substance, reflective matter, spray, coating, or other material that is obstructing the visibility or electronic image recording of the plate, the officer shall issue a uniform traffic citation and shall confiscate the plate. The department shall revoke the registration of any plate that has been found

by a court to have been physically altered with any chemical or reflective substance or coating that obstructs the visibility or electronic image recording of the plate.

(c) The Attorney General may file suit against any individual or entity offering or marketing the sale of, including via the Internet, any product advertised as having the capacity to obstruct the visibility or electronic image recording of a license plate. In addition to injunctive and monetary relief, punitive damages, and attorney's fees, the suit shall also seek a full accounting of the records of all sales to residents of or entities within this state.

Section 12. Section 336.044, Florida Statutes, is renumbered as section 334.70, Florida Statutes, and amended to read:

334.70 ~~336.044~~ Use of recyclable materials in construction.--

(1) It is the intent of the Legislature that the Department of Transportation continue to expand its current use of recovered materials in its construction programs.

(2) The Legislature declares it to be in the public interest to find alternative ways to use certain recyclable materials that currently are part of the solid waste stream and that contribute to problems of declining space in landfills. To determine the feasibility of using certain recyclable materials for paving materials, the department may undertake demonstration projects using the following materials in road construction:

(a) Ground rubber from automobile tires in road resurfacing or subbase materials for roads.~~;~~

(b) Ash residue from coal combustion byproducts for concrete and ash residue from waste incineration facilities and oil combustion byproducts for subbase material.~~,~~

(c) Recycled mixed-plastic material for guardrail posts or right-of-way fence posts.~~,~~

(d) Construction steel, including reinforcing rods and I-beams, manufactured from scrap metals disposed of in the state.~~,~~ ~~and~~

(e) Glass~~,~~ and glass aggregates.

(f) Gypsum.

(3) The department shall review and revise existing bid procedures and specifications for the purchase or use of products and materials to eliminate any procedures and specifications that explicitly discriminate against products and materials with recycled content, except where such procedures and specifications are necessary to protect the health, safety, and welfare of the people of this state.

(4) The department shall review and revise its bid procedures and specifications on a continuing basis to encourage the use of products and materials with recycled content and shall, in developing new procedures and specifications, encourage the use of products and materials with recycled content.

(5) All agencies shall cooperate with the department in carrying out the provisions of this section.

Section 13. Subsection (3) is added to section 338.161, Florida Statutes, to read:

338.161 Authority of department to advertise and promote electronic toll collection.--

(3) The department or any toll agency created by statute is authorized to incur expenses and advertise or promote electronic toll collection through agreements with any private or public entity that provides for additional uses of its electronic toll collection products and services on or off the turnpike or toll system, provided that the department or toll agency has determined it can increase nontoll revenues or add convenience or other value for its customers.

Section 14. Paragraph (b) of subsection (3) of section 338.2216, Florida Statutes, is amended to read:

338.2216 Florida Turnpike Enterprise; powers and authority.--

(3)

(b) Notwithstanding the provisions of s. 216.301 to the contrary and in accordance with s. 216.351, the Executive Office of the Governor shall, on July 1 of each year, certify forward all unexpended funds appropriated or provided pursuant to this section for the turnpike enterprise. Of the unexpended funds certified forward, any unencumbered amounts shall be carried forward. Such funds carried forward shall not exceed 5 percent of the original approved ~~total~~ operating budget, as defined in s. 216.181(1), of the turnpike enterprise. Funds carried forward pursuant to this section may be used for any lawful purpose, including, but not limited to, promotional and market activities, technology, and training. Any certified forward

funds remaining undisbursed on September 30 ~~December 31~~ of each year shall be carried forward.

Section 15. Subsection (1) of section 338.2275, Florida Statutes, is amended to read:

338.2275 Approved turnpike projects.--

(1) Legislative approval of the department's tentative work program that contains the turnpike project constitutes approval to issue bonds as required by s. 11(f), Art. VII of the State Constitution. No more than $6 billion of bonds may be outstanding to fund approved turnpike projects. ~~Turnpike projects approved to be included in future tentative work programs include, but are not limited to, projects contained in the 2003-2004 tentative work program. A maximum of $4.5 billion of bonds may be issued to fund approved turnpike projects.~~

Section 16. Paragraphs (e) and (f) are added to subsection (1) of section 339.175, Florida Statutes, and paragraphs (a) and (b) of subsection (2), paragraphs (a) and (b) of subsection (3), and subsections (5) and (12) of that section are amended, to read:

339.175 Metropolitan planning organization.--It is the intent of the Legislature to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight within and through urbanized areas of this state while minimizing transportation-related fuel consumption and air pollution. To accomplish these objectives, metropolitan planning organizations, referred to in this section as M.P.O.'s, shall develop, in cooperation with the state and public transit

operators, transportation plans and programs for metropolitan areas. The plans and programs for each metropolitan area must provide for the development and integrated management and operation of transportation systems and facilities, including pedestrian walkways and bicycle transportation facilities that will function as an intermodal transportation system for the metropolitan area, based upon the prevailing principles provided in s. 334.046(1). The process for developing such plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive, to the degree appropriate, based on the complexity of the transportation problems to be addressed. To ensure that the process is integrated with the statewide planning process, M.P.O.'s shall develop plans and programs that identify transportation facilities that should function as an integrated metropolitan transportation system, giving emphasis to facilities that serve important national, state, and regional transportation functions. For the purposes of this section, those facilities include the facilities on the Strategic Intermodal System designated under s. 339.63 and facilities for which projects have been identified pursuant to s. 339.2819(4).

(1) DESIGNATION.--

(e) An M.P.O. is a public body corporate and politic. The members of the governing body shall be the members of the agency, but such members constitute the head of a legal entity separate, distinct, and independent from the governing body of any county, municipality, or other entity that is an entity represented on the M.P.O. or a signatory to the interlocal

agreement creating the M.P.O. Upon execution of a new interlocal agreement by the governmental entities constituting the M.P.O. after redesignation or reapportionment, the new M.P.O. is subject to all of the responsibilities and liabilities imposed or incurred by the existing agency.

(f) The governing body of the M.P.O. shall designate, at minimum, a chair, vice chair, and agency clerk. The chair and vice chair shall be selected from among the members of the governing board. The agency clerk shall be a member of the governing board, an employee of the M.P.O., or another natural person and shall be charged with the responsibility of preparing meeting minutes and maintaining agency records.

Each M.P.O. required under this section must be fully operative no later than 6 months following its designation.

(2) VOTING MEMBERSHIP.--

(a) The voting membership of an M.P.O. shall consist of not fewer than 5 or more than 19 apportioned members, the exact number to be determined on an equitable geographic-population ratio basis by the Governor, based on an agreement among the affected units of general-purpose local government as required by federal rules and regulations. The Governor, in accordance with 23 U.S.C. s. 134, may also provide for M.P.O. members who represent municipalities to alternate with representatives from other municipalities within the metropolitan planning area that do not have members on the M.P.O. County commission members shall compose not less than one-third of the M.P.O. membership, except for an M.P.O. with more than 15 members located in a

county with a 5-member ~~five-member~~ county commission or an M.P.O. with 19 members located in a county with no more than 6 county commissioners, in which case county commission members may compose less than one-third percent of the M.P.O. membership, but all county commissioners must be members. All voting members shall be elected officials of general-purpose local governments, except that an M.P.O. may include, as part of its apportioned voting members, a member of a statutorily authorized planning board, an official of an agency that operates or administers a major mode of transportation, or an official of the Florida Space Authority. As used in this section, elected officials of a general-purpose local government shall exclude constitutional or charter officers, including sheriffs, tax collectors, supervisors of elections, property appraisers, clerks of the court, and similar types of officials. County commissioners ~~The county commission~~ shall compose not less than 20 percent of the M.P.O. membership if an official of an agency that operates or administers a major mode of transportation has been appointed to an M.P.O.

(b) In metropolitan areas in which authorities or other agencies have been or may be created by law to perform transportation functions and are performing transportation functions that are not under the jurisdiction of a general-purpose ~~general purpose~~ local government represented on the M.P.O., they shall be provided voting membership on the M.P.O. In all other M.P.O.'s where transportation authorities or agencies are to be represented by elected officials from general-purpose ~~general purpose~~ local governments, the M.P.O.

shall establish a process by which the collective interests of such authorities or other agencies are expressed and conveyed.

(3) APPORTIONMENT.--

(a) The Governor shall, with the agreement of the affected units of general-purpose local government as required by federal rules and regulations, apportion the membership on the applicable M.P.O. among the various governmental entities within the area. At the request of a majority of the affected units of general-purpose local government comprising an M.P.O., the Governor and a majority of units of general-purpose local governments serving on an M.P.O. ~~and~~ shall cooperatively agree upon and prescribe who may serve as an alternate member and a method for appointing alternate members who may vote at any M.P.O. meeting that an alternate member attends in place of a regular member. The methodology shall be set forth as a part of the interlocal agreement describing the M.P.O.'s membership or in the M.P.O.'s operating procedures and bylaws. ~~An appointed alternate member must be an elected official serving the same governmental entity or a general-purpose local government with jurisdiction within all or part of the area that the regular member serves.~~ The governmental entity so designated shall appoint the appropriate number of members to the M.P.O. from eligible officials. Representatives of the department shall serve as nonvoting members of the M.P.O. governing board. Nonvoting advisers may be appointed by the M.P.O. as deemed necessary; however, to the maximum extent feasible, each M.P.O. shall seek to appoint nonvoting representatives of various multimodal forms of transportation not otherwise represented by

voting members of the M.P.O. An M.P.O. shall appoint nonvoting advisers representing major military installations upon the request of the major military installations and subject to the agreement of the M.P.O. All nonvoting advisers may attend and participate fully in governing board meetings but shall not vote and shall not be members of the governing board. The Governor shall review the composition of the M.P.O. membership in conjunction with the decennial census as prepared by the United States Department of Commerce, Bureau of the Census, and reapportion it as necessary to comply with subsection (2).

(b) Except for members who represent municipalities on the basis of alternating with representatives from other municipalities that do not have members on the M.P.O. as provided in paragraph (2)(a), the members of an M.P.O. shall serve 4-year terms. Members who represent municipalities on the basis of alternating with representatives from other municipalities that do not have members on the M.P.O. as provided in paragraph (2)(a) may serve terms of up to 4 years as further provided in the interlocal agreement described in paragraph (1)(b). The membership of a member who is a public official automatically terminates upon the member's leaving his or her elective or appointive office for any reason, or may be terminated by a majority vote of the total membership of the entity's governing board ~~a county or city governing entity~~ represented by the member. A vacancy shall be filled by the original appointing entity. A member may be reappointed for one or more additional 4-year terms.

(5) POWERS, DUTIES, AND RESPONSIBILITIES.--The powers, privileges, and authority of an M.P.O. are those specified in this section or incorporated in an interlocal agreement authorized under s. 163.01. Each M.P.O. shall perform all acts required by federal or state laws or rules, now and subsequently applicable, which are necessary to qualify for federal aid. It is the intent of this section that each M.P.O. shall be involved in the planning and programming of transportation facilities, including, but not limited to, airports, intercity and high-speed rail lines, seaports, and intermodal facilities, to the extent permitted by state or federal law.

(a) Each M.P.O. shall, in cooperation with the department, develop:

1. A long-range transportation plan pursuant to the requirements of subsection (6);

2. An annually updated transportation improvement program pursuant to the requirements of subsection (7); and

3. An annual unified planning work program pursuant to the requirements of subsection (8).

(b) In developing the long-range transportation plan and the transportation improvement program required under paragraph (a), each M.P.O. shall provide for consideration of projects and strategies that will:

1. Support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

2. Increase the safety and security of the transportation system for motorized and nonmotorized users;

3. Increase the accessibility and mobility options available to people and for freight;

4. Protect and enhance the environment, promote energy conservation, and improve quality of life;

5. Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

6. Promote efficient system management and operation; and

7. Emphasize the preservation of the existing transportation system.

(c) In order to provide recommendations to the department and local governmental entities regarding transportation plans and programs, each M.P.O. shall:

1. Prepare a congestion management system for the metropolitan area and cooperate with the department in the development of all other transportation management systems required by state or federal law;

2. Assist the department in mapping transportation planning boundaries required by state or federal law;

3. Assist the department in performing its duties relating to access management, functional classification of roads, and data collection;

4. Execute all agreements or certifications necessary to comply with applicable state or federal law;

5. Represent all the jurisdictional areas within the metropolitan area in the formulation of transportation plans and programs required by this section; and

6. Perform all other duties required by state or federal law.

(d) Each M.P.O. shall appoint a technical advisory committee that includes planners; engineers; representatives of local aviation authorities, port authorities, and public transit authorities or representatives of aviation departments, seaport departments, and public transit departments of municipal or county governments, as applicable; the school superintendent of each county within the jurisdiction of the M.P.O. or the superintendent's designee; and other appropriate representatives of affected local governments. In addition to any other duties assigned to it by the M.P.O. or by state or federal law, the technical advisory committee is responsible for considering safe access to schools in its review of transportation project priorities, long-range transportation plans, and transportation improvement programs, and shall advise the M.P.O. on such matters. In addition, the technical advisory committee shall coordinate its actions with local school boards and other local programs and organizations within the metropolitan area which participate in school safety activities, such as locally established community traffic safety teams. Local school boards must provide the appropriate M.P.O. with information concerning future school sites and in the coordination of transportation service.

(e)1. Each M.P.O. shall appoint a citizens' advisory committee, the members of which serve at the pleasure of the M.P.O. The membership on the citizens' advisory committee must reflect a broad cross section of local residents with an

interest in the development of an efficient, safe, and cost-effective transportation system. Minorities, the elderly, and the handicapped must be adequately represented.

2. Notwithstanding the provisions of subparagraph 1., an M.P.O. may, with the approval of the department and the applicable federal governmental agency, adopt an alternative program or mechanism to ensure citizen involvement in the transportation planning process.

(f) The department shall allocate to each M.P.O., for the purpose of accomplishing its transportation planning and programming duties, an appropriate amount of federal transportation planning funds.

(g) Each M.P.O. shall have an executive or staff director, who reports directly to the M.P.O. governing board for all matters regarding the administration and operation of the M.P.O., and any additional personnel as deemed necessary. The executive director and any additional personnel may be employed either by an M.P.O. or by another governmental entity, such as a county, city, or regional planning council, that has a signed staff services agreement in effect with the M.P.O. In addition, an M.P.O. ~~may employ personnel or~~ may enter into contracts with local or state governmental agencies, private planning or engineering firms, or other private ~~engineering~~ firms to accomplish its transportation planning and programming duties and administrative functions required by state or federal law.

(h) Each M.P.O. shall provide training opportunities for local elected officials and others who serve on an M.P.O. in order to enhance their knowledge, effectiveness, and

participation in the urbanized area transportation planning process. The training opportunities may be conducted by an individual M.P.O. or through statewide and federal training programs and initiatives that are specifically designed to meet the needs of M.P.O. board members.

(i) In addition to the powers set forth in this section, M.P.O.'s shall have the powers set forth in this paragraph. The enumeration of the following powers is not intended to be an exhaustive list of all M.P.O. powers:

1. To grant, sell, hold, donate, dedicate, or lease or otherwise convey title, easements, or use rights in real property, including tax-reverted real property, title to which is in such public agency or separate legal entity, to any other public agency or separate legal entity created under interlocal agreement. Real property and interests in real property granted or conveyed to an M.P.O. shall be for a public purpose that may not necessarily be contemplated in the interlocal agreement.

2. To appropriate funds and sell, give, or otherwise supply personnel, services, facilities, property, franchises, or funds thereof to any party designated to operate the joint or cooperative undertaking.

3. To receive grants-in-aid or other assistance funds from the Federal Government or this state for use in carrying out transportation-related purposes.

4. To have all of the privileges and immunities from liability as set forth in the State Constitution, s. 768.28, and otherwise and to have exemptions from laws, ordinances, and rules applicable to public agencies of the state. An M.P.O.

shall ascertain whether, as a separate and distinct body politic and corporate entity, it should purchase separate public liability or workers' compensation insurance.

5. To have and provide pensions and relief, disability benefits, workers' compensation, employee salary compensation and reimbursement, and other benefits which apply to the activity of its officers or employees when performing their respective functions.

6. To employ agencies or employees.

7. To acquire, construct, manage, maintain, or operate buildings, works, or improvements.

8. To incur debts, liabilities, or obligations that do not constitute the debts, liabilities, or obligations of any of the parties to the agreement unless specifically and in writing assumed by any of the parties to the interlocal agreement creating the M.P.O.

9. To appoint a legal counsel or legal staff of its choice. If the legal counsel is also an attorney for an entity that is a member of the M.P.O., both the M.P.O. governing board and the member entity's governing body shall waive any potential for ethical conflict.

10. In addition to its other powers as set forth in this section and in s. 163.01, to have such powers as are provided for under federal law or federal administrative rules.

(j) ~~(h)~~ A chair's coordinating committee is created, composed of the M.P.O.'s serving Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties. The committee must, at a minimum:

1. Coordinate transportation projects deemed to be regionally significant by the committee.

2. Review the impact of regionally significant land use decisions on the region.

3. Review all proposed regionally significant transportation projects in the respective transportation improvement programs which affect more than one of the M.P.O.'s represented on the committee.

4. Institute a conflict resolution process to address any conflict that may arise in the planning and programming of such regionally significant projects.

(k) ~~(i)~~ 1. The Legislature finds that the state's rapid growth in recent decades has caused many urbanized areas subject to M.P.O. jurisdiction to become contiguous to each other. As a result, various transportation projects may cross from the jurisdiction of one M.P.O. into the jurisdiction of another M.P.O. To more fully accomplish the purposes for which M.P.O.'s have been mandated, M.P.O.'s shall develop coordination mechanisms with one another to expand and improve transportation within the state. The appropriate method of coordination between M.P.O.'s shall vary depending upon the project involved and given local and regional needs. Consequently, it is appropriate to set forth a flexible methodology that can be used by M.P.O.'s to coordinate with other M.P.O.'s and appropriate political subdivisions as circumstances demand.

2. Any M.P.O. may join with any other M.P.O. or any individual political subdivision to coordinate activities or to achieve any federal or state transportation planning or

development goals or purposes consistent with federal or state law. When an M.P.O. determines that it is appropriate to join with another M.P.O. or any political subdivision to coordinate activities, the M.P.O. or political subdivision shall enter into an interlocal agreement pursuant to s. 163.01, which, at a minimum, creates a separate legal or administrative entity to coordinate the transportation planning or development activities required to achieve the goal or purpose; provides ~~provide~~ the purpose for which the entity is created; provides ~~provide~~ the duration of the agreement and the entity~~,~~ and specifies ~~specify~~ how the agreement may be terminated, modified, or rescinded; describes ~~describe~~ the precise organization of the entity, including who has voting rights on the governing board, whether alternative voting members are provided for, how voting members are appointed, and what the relative voting strength is for each constituent M.P.O. or political subdivision; provides ~~provide~~ the manner in which the parties to the agreement will provide for the financial support of the entity and payment of costs and expenses of the entity; provides ~~provide~~ the manner in which funds may be paid to and disbursed from the entity; and provides ~~provide~~ how members of the entity will resolve disagreements regarding interpretation of the interlocal agreement or disputes relating to the operation of the entity. Such interlocal agreement shall become effective upon its recordation in the official public records of each county in which a member of the entity created by the interlocal agreement has a voting member. This paragraph does not require any M.P.O.'s to merge, combine, or otherwise join together as a single M.P.O.

3. Each M.P.O. located within an urbanized area consisting of more than one M.P.O., or located in an urbanized area that is immediately adjacent to an M.P.O. serving a different urbanized area, shall coordinate with other M.P.O.'s in the urbanized area or the contiguous and adjacent M.P.O.'s to develop a report demonstrating how a coordinated transportation planning process is being developed and the results of the coordinated planning process. The report should include the progress on implementing a coordinated long-range transportation plan covering the combined metropolitan planning area that serves as the basis for the transportation improvement program of each M.P.O., separate and coordinated long-range transportation plans for the affected M.P.O.'s, a coordinated priority process for regional projects, and a regional public involvement process. The report shall be submitted to members of the M.P.O.'s local legislative delegation by no later than February of each even-numbered year and may be submitted as a joint report by two or more M.P.O.'s or separate coordinated reports by individual M.P.O.'s.

(12) VOTING REQUIREMENTS.--Each long-range transportation plan required pursuant to subsection (6), each annually updated Transportation Improvement Program required under subsection (7), and each amendment that affects projects in the first 3 years of such plans and programs must be approved by each M.P.O. on a supermajority ~~recorded~~ roll call vote or hand-counted vote of a majority plus one of the membership present.

Section 17. Paragraph (h) of subsection (2) of section 20.23, Florida Statutes, is amended to read:

20.23 Department of Transportation.--There is created a Department of Transportation which shall be a decentralized agency.

(2)

(h) The commission shall appoint an executive director and assistant executive director, who shall serve under the direction, supervision, and control of the commission. The executive director, with the consent of the commission, shall employ such staff as are necessary to perform adequately the functions of the commission, within budgetary limitations. All employees of the commission are exempt from part II of chapter 110 and shall serve at the pleasure of the commission. The salaries and benefits of all employees of the commission, except for the executive director, shall be set in accordance with the Selected Exempt Service; ~~provided,~~ however, ~~that~~ the salary and benefits of the executive director shall be set in accordance with the Senior Management Service. The commission shall have complete authority for fixing the salary of the executive director and assistant executive director.

Section 18. Paragraph (c) of subsection (6) of section 332.007, Florida Statutes, is amended to read:

332.007 Administration and financing of aviation and airport programs and projects; state plan.--

(6) Subject to the availability of appropriated funds, the department may participate in the capital cost of eligible public airport and aviation development projects in accordance with the following rates, unless otherwise provided in the

General Appropriations Act or the substantive bill implementing the General Appropriations Act:

(c) When federal funds are not available, the department may fund up to 80 percent of master planning and eligible aviation development projects at publicly owned, publicly operated airports. If federal funds are available but insufficient to meet the maximum authorized federal share, the department may fund up to 80 percent of the nonfederal share of such projects. Such funding is limited to airports that have no scheduled commercial service.

Section 19. Part X of chapter 348, Florida Statutes, is redesignated as part XI, and a new part X, consisting of sections 348.9801, 348.9802, 348.9803, 348.9804, 348.9805, 348.9806, 348.9807, 348.9808, 348.9809, 348.9811, 348.9812, 348.9813, 348.9814, 348.9815, 348.9816, and 348.9817, is added to that chapter to read:

PART X

Osceola County Expressway Authority

348.9801 Short title.--This part may be cited as the "Osceola County Expressway Authority Law."

348.9802 Definitions.--The following terms, whenever used or referred to in this part, shall have the following meanings, except in those instances where the context clearly indicates otherwise:

(1) "Agency of the state" means and includes the state and any department of, or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by, the state.

(2) "Authority" means the body politic and corporate and agency of the state created by this part.

(3) "Bonds" means and includes the notes, bonds, refunding bonds, or other evidences of indebtedness or obligations, in either temporary or definitive form, which the authority is authorized to issue pursuant to this part.

(4) "County" means Osceola County.

(5) "Department" means the Department of Transportation.

(6) "Expressway" is the same as limited access expressway.

(7) "Federal agency" means and includes the United States, the President of the United States, and any department of or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States.

(8) "Lease-purchase agreement" means the lease-purchase agreements which the authority is authorized pursuant to this part to enter into with the department.

(9) "Limited access expressway" means a street or highway especially designed for through traffic and over, from, or to which no person shall have the right of easement, use, or access except in accordance with the rules and regulations promulgated and established by the authority for the use of such facility. Such highways or streets may be parkways from which trucks, buses, and other commercial vehicles shall be excluded or they may be freeways open to use by all customary forms of street and highway traffic.

(10) "Members" means the governing body of the authority, and the term "member" means one of the individuals constituting such governing body.

(11) "Osceola County gasoline tax funds" means all of the 80-percent surplus gasoline tax funds accruing in each year to the department for use in Osceola County under the provisions of s. 9, Art. XII of the State Constitution after deduction only of any amounts of said gasoline tax funds heretofore pledged by the department or the county for outstanding obligations.

(12) "Osceola County Expressway System" means any and all expressways and appurtenant facilities thereto, including, but not limited to, all approaches, roads, bridges, and avenues of access for said expressways that are either built by the authority or whose ownership is transferred to the authority by other governmental or private entities.

(13) "State Board of Administration" means the body corporate existing under the provisions of s. 9, Art. XII of the State Constitution or any successor thereto.

348.9803 Osceola County Expressway Authority.--

(1) There is hereby created and established a body politic and corporate, an agency of the state, to be known as the Osceola County Expressway Authority, hereinafter referred to as "authority."

(2)(a) The governing body of the authority shall consist of six members. Three members shall be citizens of Osceola County, who shall be appointed by the governing body of the county. Two members shall be citizens of Osceola County appointed by the Governor. The term of each appointed member shall be for 4 years. However, the members appointed by the Governor for the first time shall serve a term of 2 years. Each appointed member shall hold office until his or her successor

has been appointed and has qualified. A vacancy occurring during a term shall be filled only for the balance of the unexpired term. Each appointed member of the authority shall be a person of outstanding reputation for integrity, responsibility, and business ability, but no person who is an officer or employee of any city or of Osceola County in any other capacity shall be an appointed member of the authority. A member of the authority shall be eligible for reappointment.

(b) Members of the authority may be removed from office by the Governor for misconduct, malfeasance, or nonfeasance in office.

(c) The district secretary of the department serving in the district that includes Osceola County shall serve as an ex officio, nonvoting member.

(3)(a) The authority shall elect one of its members as chair of the authority. The authority shall also elect a secretary and a treasurer who may or may not be members of the authority. The chair, secretary, and treasurer shall hold such offices at the will of the authority.

(b) Four members of the authority shall constitute a quorum, and the vote of three members shall be necessary for any action taken by the authority. No vacancy in the authority shall impair the right of a quorum of the authority to exercise all of the rights and perform all of the duties of the authority.

(4)(a) The authority may employ an executive secretary, an executive director, its own counsel and legal staff, technical experts, such engineers, and such employees, permanent or temporary, as it may require; may determine the qualifications

and fix the compensation of such persons, firms, or corporations; and may employ a fiscal agent or agents. However, the authority shall solicit sealed proposals from at least three persons, firms, or corporations for the performance of any services as fiscal agents. The authority may delegate to one or more of its agents or employees such of its power as it shall deem necessary to carry out the purposes of this part, subject always to the supervision and control of the authority.

(b) Members of the authority shall be entitled to receive from the authority their travel and other necessary expenses incurred in connection with the business of the authority as provided in s. 112.061, but they shall draw no salaries or other compensation.

348.9804 Purposes and powers.--

(1)(a) The authority created and established by the provisions of this part is hereby granted and shall have the right to acquire, hold, construct, improve, maintain, operate, own, and lease in the capacity of lessor the Osceola County Expressway System, hereinafter referred to as "system."

(b) It is the express intention of this part that the authority, in the construction of the Osceola County Expressway System, shall be authorized to construct any extensions, additions, or improvements to the system or appurtenant facilities, including all necessary approaches, roads, bridges, and avenues of access with such changes, modifications, or revisions of the project as shall be deemed desirable and proper.

(2) The authority is hereby granted and shall have and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of its purposes, including, but not limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, and complain and defend in all courts.

(b) To adopt, use, and alter at will a corporate seal.

(c) To acquire by donation or otherwise, purchase, hold, lease as lessee, and use any franchise or property, real, personal, or mixed, tangible or intangible, or any options thereof, in its own name or in conjunction with others, or interest therein, necessary or desirable for carrying out the purposes of the authority, and to sell, lease as lessor, transfer, and dispose of any property or interest therein at any time acquired by it.

(d) To enter into and make leases for terms not exceeding 40 years as either lessee or lessor in order to carry out the right to lease as set forth in this part.

(e) To enter into and make lease-purchase agreements with the department for terms not exceeding 40 years or until any bonds secured by a pledge of rentals thereunder and any refundings thereof are fully paid as to both principal and interest, whichever is longer.

(f) To fix, alter, charge, establish, and collect rates, fees, rentals, and other charges for the services and facilities of the Osceola County Expressway System, which rates, fees, rentals, and other charges shall always be sufficient to comply with any covenants made with the holders of any bonds issued

pursuant to this part; however, such right and power may be assigned or delegated by the authority to the department.

(g) To borrow money and make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, either in temporary or definitive form, in this part sometimes called "bonds" of the authority, for the purpose of financing all or part of the improvement or extension of the Osceola County Expressway System and appurtenant facilities, including all approaches, streets, roads, bridges, and avenues of access for the Osceola County Expressway System and for any other purpose authorized by this part, said bonds to mature in not exceeding 40 years after the date of the issuance thereof, and to secure the payment of such bonds or any part thereof by a pledge of any or all of its revenues, rates, fees, rentals, or other charges, including all or any portion of the Osceola County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department; and, in general, to provide for the security of the bonds and the rights and remedies of the holders thereof. However, no portion of the Osceola County gasoline tax funds shall be pledged for the construction of any project for which a toll is to be charged unless the anticipated tolls are reasonably estimated by the board of county commissioners, at the date of its resolution pledging said funds, to be sufficient to cover the principal and interest of such obligations during the period when said pledge of funds shall be in effect.

1. The authority shall reimburse Osceola County for any sums expended from said gasoline tax funds used for the payment

of such obligations. Any gasoline tax funds so disbursed shall be repaid when the authority deems it practicable, together with interest at the highest rate applicable to any obligations of the authority.

2. If the authority determines to fund or refund any bonds theretofore issued by the authority or by the board of county commissioners as aforesaid prior to the maturity thereof, the proceeds of the funding or refunding bonds shall, pending the prior redemption of the bonds to be funded or refunded, be invested in direct obligations of the United States. It is the express intention of this part that such outstanding bonds may be funded or refunded by the issuance of bonds pursuant to this part.

(h) To make contracts of every name and nature, including, but not limited to, partnerships providing for participation in ownership and revenues, and to execute all instruments necessary or convenient for the carrying on of its business.

(i) Without limitation of the foregoing, to borrow money and accept grants from and to enter into contracts, leases, or other transactions with any federal agency, the state, any agency of the state, Osceola County, or with any other public body of the state.

(j) To have the power of eminent domain, including the procedural powers granted under chapters 73 and 74.

(k) To pledge, hypothecate, or otherwise encumber all or any part of the revenues, rates, fees, rentals, or other charges or receipts of the authority, including all or any portion of the Osceola County gasoline tax funds received by the authority

pursuant to the terms of any lease-purchase agreement between the authority and the department, as security for all or any of the obligations of the authority.

(l) To enter into partnership and other agreements respecting ownership and revenue participation in order to facilitate financing and constructing any project or portions thereof.

(m) To participate in developer agreements or to receive developer contributions.

(n) To contract with Osceola County for the operation of a toll facility within the county.

(o) To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority in order to carry out the powers granted to it by this part or any other law.

(p) With the consent of the county within whose jurisdiction the following activities occur, to construct, operate, and maintain roads, bridges, avenues of access, thoroughfares, and boulevards outside the jurisdictional boundaries of Osceola County together with the right to construct, repair, replace, operate, install, and maintain electronic toll payment systems thereon with all necessary and incidental powers to accomplish the foregoing.

(3) The authority shall have no power at any time or in any manner to pledge the credit or taxing power of the state or any political subdivision or agency thereof, including Osceola County, nor shall any of the authority's obligations be deemed to be obligations of the state or of any political subdivision

or agency thereof, nor shall the state or any political subdivision or agency thereof, except the authority, be liable for the payment of the principal of or interest on such obligations.

(4) Anything in this part to the contrary notwithstanding, acquisition of right-of-way for a project of the authority which is within the boundaries of any municipality in Osceola County shall not be started unless and until the route of said project within said municipality has been given prior approval by the governing body of said municipality.

(5) Anything in this part to the contrary notwithstanding, acquisition of right-of-way for a project of the authority which is within the unincorporated area of Osceola County shall not be started unless and until the route of said project within the unincorporated area has been given prior approval by the governing body of Osceola County.

(6) The authority shall have no power other than by consent of Osceola County or any affected city to enter into any agreement which would legally prohibit the construction of any road by Osceola County or by any municipality within Osceola County.

348.9805 Authority for bond financing of improvements.--Pursuant to s. 11(f), Art. VII of the State Constitution, the Legislature hereby approves for bond financing by the Osceola County Expressway Authority improvements to toll collection facilities, interchanges to the legislatively approved expressway system, and any other facility appurtenant, necessary, or incidental to the approved system. Subject to

terms and conditions of applicable revenue bond resolutions and covenants, such costs may be financed in whole or in part by revenue bonds issued pursuant to s. 348.9806(1)(a) or (b) whether currently issued or issued in the future, or by a combination of such bonds.

348.9806 Bonds of the authority.--

(1)(a) Bonds may be issued on behalf of the authority pursuant to the State Bond Act.

(b) Alternatively, the authority may issue its own bonds pursuant to this part at such times and in such principal amount as, in the opinion of the authority, is necessary to provide sufficient moneys for achieving its purposes; however, such bonds may not pledge the full faith and credit of the state. Bonds issued by the authority pursuant to this paragraph or paragraph (a), whether on original issuance or on refunding, shall be authorized by resolution of the members thereof, may be either term or serial bonds, and shall bear such date or dates, mature at such time or times, not exceeding 40 years after their respective dates, bear interest at such rate or rates, payable semiannually, be in such denominations, be in such form, either coupon or fully registered, carry such registration, exchangeability, and interchangeability privileges, be payable in such medium of payment and at such place or places, be subject to such terms of redemption, and be entitled to such priorities on the revenues, rates, fees, rentals, or other charges or receipts of the authority including the Osceola County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority

and the department, as such resolution or any resolution subsequent thereto may provide. The bonds shall be executed either by manual or facsimile signature by such officers as the authority shall determine, provided that such bonds shall bear at least one signature which is manually executed thereon, and the coupons attached to such bonds shall bear the facsimile signature or signatures of such officer or officers as shall be designated by the authority and shall have the seal of the authority affixed, imprinted, reproduced, or lithographed thereon, all as may be prescribed in such resolution or resolutions.

(c) Bonds issued pursuant to paragraph (a) or paragraph (b) shall be sold at public sale in the same manner provided by the State Bond Act. However, if the authority shall, by official action at a public meeting, determine that a negotiated sale of such bonds is in the best interest of the authority, the authority may negotiate the sale of such bonds with the underwriter designated by the authority and the Division of Bond Finance of the State Board of Administration with respect to bonds issued pursuant to paragraph (a) or solely the authority with respect to bonds issued pursuant to paragraph (b). The authority's determination to negotiate the sale of such bonds may be based, in part, upon the written advice of the authority's financial adviser. Pending the preparation of definitive bonds, interim certificates may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the authority may determine.

(d) The authority may issue bonds pursuant to paragraph (b) to refund any bonds previously issued regardless of whether the bonds being refunded were issued by the authority pursuant to this chapter or on behalf of the authority pursuant to the State Bond Act.

(2) Any such resolution or resolutions authorizing any bonds hereunder may contain provisions which shall be part of the contract with the holders of such bonds, as to:

(a) The pledging of all or any part of the revenues, rates, fees, rentals (including all or any portion of the Osceola County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department, or any part thereof), or other charges or receipts of the authority, derived by the authority, from the Osceola County Expressway System.

(b) The completion, improvement, operation, extension, maintenance, repair, lease, or lease-purchase agreement of said system and the duties of the authority and others, including the department, with reference thereto.

(c) Limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant by the United States or the state may be applied.

(d) The fixing, charging, establishing, and collecting of rates, fees, rentals, or other charges for use of the services and facilities of the Osceola County Expressway System or any part thereof.

(e) The setting aside of reserves or sinking funds or repair and replacement funds and the regulation and disposition thereof.

(f) Limitations on the issuance of additional bonds.

(g) The terms and provisions of any lease-purchase agreement, deed of trust, or indenture securing the bonds or under which the same may be issued.

(h) Any other or additional agreements with the holders of the bonds which the authority may deem desirable and proper.

(3) The authority may employ fiscal agents as provided by this part or the State Board of Administration may, upon request of the authority, act as fiscal agent for the authority in the issuance of any bonds which may be issued pursuant to this part. The State Board of Administration may, upon request of the authority, take over the management, control, administration, custody, and payment of any or all debt services or funds or assets now or hereafter available for any bonds issued pursuant to this part. The authority may enter into any deeds of trust, indentures, or other agreements with its fiscal agent or with any bank or trust company within or without the state as security for such bonds and may, under such agreements, sign and pledge all or any of the revenues, rates, fees, rentals, or other charges or receipts of the authority, including all or any portion of the Osceola County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department, thereunder. Such deed of trust, indenture, or other agreement may contain such provisions as are customary in such instruments or, as the

authority may authorize, including, but without limitation, provisions as to:

(a) The completion, improvement, operation, extension, maintenance, repair, and lease of or lease-purchase agreement relating to the Osceola County Expressway System and the duties of the authority and others including the department with reference thereto.

(b) The application of funds and the safeguarding of funds on hand or on deposit.

(c) The rights and remedies of the trustee and the holders of the bonds.

(d) The terms and provisions of the bonds or the resolutions authorizing the issuance of same.

(4) Any of the bonds issued pursuant to this part are, and are hereby declared to be, negotiable instruments and shall have all the qualities and incidents of negotiable instruments under the law merchant and the negotiable instruments law of the state.

(5) Notwithstanding any of the provisions of this part, each project, building, or facility which has been financed by the issuance of bonds or other evidence of indebtedness under this part and any refinancing thereof is hereby approved as provided for in s. 11(f), Art. VII of the State Constitution.

348.9807 Remedies of the bondholders.--

(1) The rights and the remedies herein conferred upon or granted to the bondholders shall be in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or resolutions providing for the

issuance of bonds or by a lease-purchase agreement, deed of trust, indenture, or other agreement under which the bonds may be issued or secured. If the authority defaults in the payment of the principal of or interest on any of the bonds issued pursuant to the provisions of this part after such principal of or interest on said bonds becomes due, whether at maturity or upon call for redemption, or if the department defaults in any payments under or covenants made in any lease-purchase agreement between the authority and the department and such default continues for a period of 30 days or if the authority or the department fails or refuses to comply with the provisions of this part or any agreement made with or for the benefit of the holders of the bonds, the holders of 25 percent in aggregate principal amount of the bonds then outstanding shall be entitled as of right to the appointment of a trustee to represent such bondholders for the purposes hereof; provided that such holders of 25 percent in aggregate principal amount of the bonds then outstanding shall have first given notice to the authority and to the department of their intention to appoint a trustee. Such notice shall be deemed to have been given if given in writing, deposited in a securely sealed postpaid wrapper, mailed at a regularly maintained United States post office box or station, and addressed, respectively, to the chair of the authority and to the Secretary of Transportation at the principal office of the department.

(2) Such trustee and any trustee under any deed of trust, indenture, or other agreement may and, upon written request of the holders of 25 percent or such other percentages as may be

specified in any deed of trust, indenture, or other agreement aforesaid, in principal amount of the bonds then outstanding, shall in any court of competent jurisdiction in his, her, or its own name:

(a) By mandamus or other suit, action, or proceeding at law or in equity, enforce all rights of the bondholders, including the right to require the authority to fix, establish, maintain, collect, and charge rates, fees, rentals, and other charges adequate to carry out any agreement as to or pledge of the revenues or receipts of the authority to carry out any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this part.

(b) By mandamus or other suit, action, or proceeding at law or in equity, enforce all rights of the bondholders under or pursuant to any lease-purchase agreement between the authority and the department, including the right to require the department to make all rental payments required to be made by it under the provisions of any such lease-purchase agreement, whether from the Osceola County gasoline tax funds or other funds of the department so agreed to be paid, and to require the department to carry out any other covenants and agreements with or for the benefit of the bondholders and to perform its and their duties under this part.

(c) Bring suit upon the bonds.

(d) By action or suit in equity, require the authority or the department to account as if it were the trustee of an express trust for the bondholders.

(e) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders.

(3) Whether or not all bonds have been declared due and payable, any trustee, when appointed under this section or acting under a deed of trust, indenture, or other agreement, shall be entitled as of right to the appointment of a receiver who may enter upon and take possession of the Osceola County Expressway System or the facilities or any part or parts thereof, the rates, fees, rentals, or other revenues, charges, or receipts from which are or may be applicable to the payment of the bonds so in default, and, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department, operate and maintain the same for and on behalf and in the name of the authority, the department, and the bondholders and collect and receive all rates, fees, rentals, and other charges or receipts or revenues arising therefrom in the same manner as the authority or the department might do, and shall deposit all such moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action, or proceeding by the trustee, the fees, counsel fees, and expenses of the trustee and said receiver, if any, and all costs and disbursements allowed by the court shall be a first charge on any rates, fees, rentals, or other charges, revenues, or receipts derived from the Osceola County Expressway System or the facilities or services or any part or parts thereof, including payments under any such lease-purchase agreement as aforesaid which said rates, fees, rentals,

or other charges, revenues, or receipts shall or may be applicable to the payment of the bonds so in default. Such trustee shall also have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth in this part or incident to the representation of the bondholders in the enforcement and protection of their rights.

(4) Nothing in this section or any other section of this part shall authorize any receiver appointed pursuant to this part for the purpose, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department, of operating and maintaining the Osceola County Expressway System or any facilities or part or parts thereof to sell, assign, mortgage, or otherwise dispose of any of the assets of whatever kind and character belonging to the authority. It is the intention of this part to limit the powers of such receiver, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department, to the operation and maintenance of the Osceola County Expressway System or any facility or part or parts thereof, as the court may direct, in the name and for and on behalf of the authority, the department, and the bondholders. No holder of bonds on the authority nor any trustee shall ever have the right in any suit, action, or proceeding at law or in equity to compel a receiver, nor shall any receiver be authorized or any court be empowered to direct the receiver, to sell, assign, mortgage, or otherwise dispose of any assets of whatever kind or character belonging to the authority.

348.9808 Lease-purchase agreement.--

(1) In order to effectuate the purposes of this part and as authorized by this part, the authority may enter into a lease-purchase agreement with the department relating to and covering the Osceola County Expressway System.

(2) Such lease-purchase agreement shall provide for the leasing of the Osceola County Expressway System by the authority as lessor to the department as lessee, shall prescribe the term of such lease and the rentals to be paid thereunder, and shall provide that, upon the completion of the faithful performance thereunder and the termination of such lease-purchase agreement, title in fee simple absolute to the Osceola County Expressway System as then constituted shall be transferred in accordance with law by the authority to the state and the authority shall deliver to the department such deeds and conveyances as shall be necessary or convenient to vest title in fee simple absolute in the state.

(3) Such lease-purchase agreement may include such other provisions, agreements, and covenants as the authority and the department deem advisable or required, including, but not limited to, provisions as to the bonds to be issued under and for the purposes of this part; the completion, extension, improvement, operation, and maintenance of the Osceola County Expressway System; the expenses and the cost of operation of said authority; the charging and collection of tolls, rates, fees, and other charges for the use of the services and facilities thereof; the application of federal or state grants or aid which may be made or given to assist the authority in the completion, extension, improvement, operation, and maintenance

of the Orlando Expressway System which the authority is hereby authorized to accept and apply to such purposes; the enforcement of payment and collection of rentals; and any other terms, provisions, or covenants necessary, incidental, or appurtenant to the making of and full performance under such lease-purchase agreement.

(4) The department as lessee under such lease-purchase agreement is hereby authorized to pay as rentals thereunder any rates, fees, charges, funds, moneys, receipts, or income accruing to the department from the operation of the Osceola County Expressway System and the Osceola County gasoline tax funds and may also pay as rentals any appropriations received by the department pursuant to any act of the Legislature heretofore or hereafter enacted. However, nothing herein nor in such lease-purchase agreement is intended to nor shall this part or such lease-purchase agreement require the making or continuance of such appropriations nor shall any holder of bonds issued pursuant to this part ever have any right to compel the making or continuance of such appropriations.

(5) No pledge of said Osceola County gasoline tax funds as rentals under such lease-purchase agreement shall be made without the consent of Osceola County evidenced by a resolution duly adopted by the board of county commissioners of said county at a public hearing held pursuant to due notice thereof published at least once a week for 3 consecutive weeks before the hearing in a newspaper of general circulation in Osceola County. In addition to other provisions, the resolution shall provide that any excess of said pledged gasoline tax funds which

is not required for debt service or reserves for such debt service for any bonds issued by said authority shall be returned annually to the department for distribution to Osceola County as provided by law. Before making any application for such pledge of gasoline tax funds, the authority shall present the plan of its proposed project to the Osceola County Planning and Zoning Commission for its comments and recommendations.

(6) The department shall have power to covenant in any lease-purchase agreement that it will pay all or any part of the cost of the operation, maintenance, repair, renewal, and replacement of the system and any part of the cost of completing the system to the extent that the proceeds of bonds issued therefor are insufficient from sources other than the revenues derived from the operation of the system and Osceola County gasoline tax funds. The department may also agree to make such other payments from any moneys available to the commission or the county in connection with the construction or completion of the system as shall be deemed by the department to be fair and proper under any such covenants heretofore or hereafter entered into.

(7) The system shall be a part of the state road system and the department is hereby authorized, upon the request of the authority, to expend out of any funds available for the purpose such moneys and to use such of its engineering and other forces as may be necessary and desirable in the judgment of the department for the operation of the authority and for traffic surveys, borings, surveys, preparation of plans and specifications, estimates of cost, and other preliminary

engineering and other studies; however, the aggregate amount of moneys expended for said purposes by the department shall not exceed the sum of $375,000.

348.9809 Department may be appointed agent of authority for construction.--The authority may appoint the department as its agent for the purpose of constructing improvements and extensions to the Osceola County Expressway System and for the completion thereof. In such event, the authority shall provide the department with complete copies of all documents, agreements, resolutions, contracts, and instruments relating thereto; shall request the department to do such construction work, including the planning, surveying, and actual construction of the completion, extensions, and improvements of the Osceola County Expressway System; and shall transfer to the credit of an account of the department in the treasury of the state the necessary funds therefor, and the department shall thereupon be authorized, empowered, and directed to proceed with such construction and to use the funds for such purpose in the same manner that it is now authorized to use the funds otherwise provided by law for its use in construction of roads and bridges.

348.9811 Acquisition of lands and property.--

(1) For the purposes of this part, the Osceola County Expressway Authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation by eminent domain proceedings as the authority may deem necessary for any of the purposes of this part, including, but not limited to, any

lands reasonably necessary for securing applicable permits, areas necessary for management of access, borrow pits, drainage ditches, water retention areas, rest areas, replacement access for landowners whose access is impaired due to the construction of a facility, and replacement rights-of-way for relocated rail and utility facilities; for existing, proposed, or anticipated transportation facilities on the Osceola County Expressway System or in a transportation corridor designated by the authority; or for the purposes of screening, relocation, removal, or disposal of junkyards and scrap metal processing facilities. The authority shall also have the power to condemn any material and property necessary for such purposes.

(2) The right of eminent domain conferred in this part shall be exercised by the authority in the manner provided by law.

(3) When the authority acquires property for a transportation facility or in a transportation corridor, it is not subject to any liability imposed by chapter 376 or chapter 403 for preexisting soil or groundwater contamination due solely to its ownership. This section does not affect the rights or liabilities of any past or future owners of the acquired property, nor does it affect the liability of any governmental entity for the results of its actions which create or exacerbate a pollution source. The authority and the Department of Environmental Protection may enter into interagency agreements for the performance, funding, and reimbursement of the investigative and remedial acts necessary for property acquired by the authority.

348.9812 Cooperation with other units, boards, agencies, and individuals.--Express authority and power is hereby given and granted to any county, municipality, drainage district, road and bridge district, school district, or any other political subdivision, board, commission, or individual in or of the state to make and enter into with the authority contracts, leases, conveyances, partnerships, or other agreements within the provisions and purposes of this part. The authority is hereby expressly authorized to make and enter into contracts, leases, conveyances, partnerships, and other agreements with any political subdivision, agency, or instrumentality of the state and any and all federal agencies, corporations, and individuals for the purpose of carrying out the provisions of this part.

348.9813 Covenant of the state.--The state does hereby pledge to and agrees with any person, firm, or corporation or federal or state agency subscribing to or acquiring the bonds to be issued by the authority for the purposes of this part that the state will not limit or alter the rights hereby vested in the authority and the department until all bonds at any time issued, together with the interest thereon, are fully paid and discharged insofar as the same affects the rights of the holders of bonds issued hereunder. The state does further pledge to and agree with the United States that in the event any federal agency shall construct or contribute any funds for the completion, extension, or improvement of the Osceola County Expressway System, or any part or portion thereof, the state will not alter or limit the rights and powers of the authority and the department in any manner which would be inconsistent

with the continued maintenance and operation of the Osceola County Expressway System or the completion, extension, or improvement thereof or which would be inconsistent with the due performance of any agreements between the authority and any such federal agency. The authority and the department shall continue to have and may exercise all powers herein granted so long as the same shall be necessary or desirable for the carrying out of the purposes of this part and the purposes of the United States in the completion, extension, or improvement of the Osceola County Expressway System or any part or portion thereof.

348.9814 Exemption from taxation.--The effectuation of the authorized purposes of the authority created under this part is, shall, and will be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions and, since the authority will be performing essential governmental functions in effectuating such purposes, the authority shall not be required to pay any taxes or assessments of any kind or nature whatsoever upon any property acquired or used by it for such purposes or upon any rates, fees, rentals, receipts, income, or charges at any time received by it and the bonds issued by the authority, their transfer, and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation of any kind by the state or by any political subdivision or taxing agency or instrumentality thereof. The exemption granted by this section shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

348.9815 Eligibility for investments and security.--Any bonds or other obligations issued pursuant to this part shall be and constitute legal investments for banks, savings banks, trustees, executors, administrators, and all other fiduciaries and for all state, municipal, and other public funds and shall also be and constitute securities eligible for deposit as security for all state, municipal, or other public funds, notwithstanding the provisions of any other law or laws to the contrary.

348.9816 Pledges enforceable by bondholders.--It is the express intention of this part that any pledge by the department of rates, fees, revenues, Osceola County gasoline tax funds, or other funds, as rentals, to the authority, or any covenants or agreements relative thereto, may be enforceable in any court of competent jurisdiction against the authority or directly against the department by any holder of bonds issued by the authority.

348.9817 This part complete and additional authority.--

(1) The powers conferred by this part shall be in addition and supplemental to the existing powers of the board and the department, and this part shall not be construed as repealing any of the provisions of any other law, general, special, or local, but to supersede such other laws in the exercise of the powers provided in this part and to provide a complete method for the exercise of the powers granted in this part. The extension and improvement of the Osceola County Expressway System and the issuance of bonds hereunder to finance all or part of the cost thereof may be accomplished upon compliance with the provisions of this part without regard to or necessity

for compliance with the provisions, limitations, or restrictions contained in any other general, special, or local law, including, but not limited to, s. 215.821. No approval of any bonds issued under this part by the qualified electors or qualified electors who are freeholders in the state or in Osceola County or in any other political subdivision of the state shall be required for the issuance of such bonds pursuant to this part.

(2) This part shall not be deemed to repeal, rescind, or modify the Osceola County Charter. This part shall not be deemed to repeal, rescind, or modify any other law relating to the State Board of Administration, the Department of Transportation, or the Division of Bond Finance of the State Board of Administration but shall be deemed to and shall supersede such other laws as are inconsistent with the provisions of this part, including, but not limited to, s. 215.821.

Section 20. Paragraph (b) of subsection (7) of section 373.036, Florida Statutes, is amended to read:

373.036 Florida water plan; district water management plans.--

(7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL REPORT.--

(b) The consolidated annual report shall contain the following elements, as appropriate to that water management district:

1. A district water management plan annual report or the annual work plan report allowed in subparagraph (2)(e)4.

2. The department-approved minimum flows and levels annual priority list and schedule required by s. 373.042(2).

3. The annual 5-year capital improvements plan required by s. 373.536(6)(a)3.

4. The alternative water supplies annual report required by s. 373.1961(2)(k).

5. The final annual 5-year water resource development work program required by s. 373.536(6)(a)4.

6. The Florida Forever Water Management District Work Plan annual report required by s. 373.199(7).

7. The mitigation donation annual report required by s. 373.414(1)(c) ~~(b)~~ 2.

Section 21. Subsection (12) is added to section 373.406, Florida Statutes, to read:

373.406 Exemptions.--The following exemptions shall apply:

(12) Department of Transportation projects and activities described in s. 373.4146(1) are exempt from regulation under this part and from any rule, manual, or order adopted under this part.

Section 22. Paragraph (e) of subsection (6) and subsection (7) of section 373.4135, Florida Statutes, are amended to read:

373.4135 Mitigation banks and offsite regional mitigation.--

(6) An environmental creation, preservation, enhancement, or restoration project, including regional offsite mitigation areas, for which money is donated or paid as mitigation, that is sponsored by the department, a water management district, or a local government and provides mitigation for five or more

applicants for permits under this part, or for 35 or more acres of adverse impacts, shall be established and operated under a memorandum of agreement. The memorandum of agreement shall be between the governmental entity proposing the mitigation project and the department or water management district, as appropriate. Such memorandum of agreement need not be adopted by rule. For the purposes of this subsection, one creation, preservation, enhancement, or restoration project shall mean one or more parcels of land with similar ecological communities that are intended to be created, preserved, enhanced, or restored under a common scheme.

(e) Projects governed by this subsection, except for projects established pursuant to subsection (7), shall be subject to the provisions of s. 373.414(1)(c) ~~(b)~~1.

(7) The department, water management districts, and local governments may elect to establish and manage mitigation sites, including regional offsite mitigation areas, or contract with permitted mitigation banks, to provide mitigation options for private single-family lots or homeowners. The department, water management districts, and local governments shall provide a written notice of their election under this subsection by United States mail to those individuals who have requested, in writing, to receive such notice. The use of mitigation options established under this subsection are not subject to the full-cost-accounting provision of s. 373.414(1)(c) ~~(b)~~1. To use a mitigation option established under this subsection, the applicant for a permit under this part must be a private, single-family lot or homeowner, and the land upon which the

adverse impact is located must be intended for use as a single-family residence by the current owner. The applicant must not be a corporation, partnership, or other business entity. However, the provisions of this subsection shall not apply to other entities that establish offsite regional mitigation as defined in this section and s. 373.403.

Section 23. Paragraph (d) of subsection (6) of section 373.4136, Florida Statutes, is amended to read:

373.4136 Establishment and operation of mitigation banks.--

(6) MITIGATION SERVICE AREA.--The department or water management district shall establish a mitigation service area for each mitigation bank permit. The department or water management district shall notify and consider comments received on the proposed mitigation service area from each local government within the proposed mitigation service area. Except as provided herein, mitigation credits may be withdrawn and used only to offset adverse impacts in the mitigation service area. The boundaries of the mitigation service area shall depend upon the geographic area where the mitigation bank could reasonably be expected to offset adverse impacts. Mitigation service areas may overlap, and mitigation service areas for two or more mitigation banks may be approved for a regional watershed.

(d) If the requirements in s. 373.414(1)(c) ~~(b)~~ and (8) are met, the following projects or activities regulated under this part shall be eligible to use a mitigation bank, regardless of whether they are located within the mitigation service area:

1. Projects with adverse impacts partially located within the mitigation service area.

2. Linear projects, such as roadways, transmission lines, distribution lines, pipelines, or railways.

3. Projects with total adverse impacts of less than 1 acre in size.

Section 24. Paragraphs (b) and (c) of subsection (1) of section 373.414, Florida Statutes, are redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added to that subsection to read:

373.414 Additional criteria for activities in surface waters and wetlands.--

(1) As part of an applicant's demonstration that an activity regulated under this part will not be harmful to the water resources or will not be inconsistent with the overall objectives of the district, the governing board or the department shall require the applicant to provide reasonable assurance that state water quality standards applicable to waters as defined in s. 403.031(13) will not be violated and reasonable assurance that such activity in, on, or over surface waters or wetlands, as delineated in s. 373.421(1), is not contrary to the public interest. However, if such an activity significantly degrades or is within an Outstanding Florida Water, as provided by department rule, the applicant must provide reasonable assurance that the proposed activity will be clearly in the public interest.

(b) Department of Transportation projects and activities described in s. 373.4146(1) are exempt from the public-interest criteria of this subsection.

Section 25. Subsection (7) is added to section 373.4145, Florida Statutes, to read:

373.4145 Interim part IV permitting program for the Northwest Florida Water Management District.--

(7) Department of Transportation projects and activities described in s. 373.4146(1) are exempt from the provisions of this section and from any rules, manuals, or orders adopted under this section.

Section 26. Section 373.4146, Florida Statutes, is created to read:

373.4146 Permitting exemptions for Department of Transportation projects; establishment of permit thresholds.--

(1) The following state transportation projects and activities are exempt from regulation under this part and from any rule, manual, or order adopted under this part:

(a) Resurfacing, restoration, and rehabilitation work on existing highways to extend the service life or enhance highway safety, including, but not limited to, widening existing lanes, improving shoulders, and extending existing culverts or drainage structures to meet current highway safety standards, but not including increasing the number of through-travel lanes.

(b) In-kind bridge replacement with the same number of through-travel lanes designed to current safety standards, and associated approach roadway work.

(c) Intersection improvements, including the addition or extension of turn lanes and median crossings.

(d) Addition of pedestrian and bicycle facilities to existing highways.

(2) The following provisions apply to all state transportation projects regulated under this part:

(a) As long as the stormwater discharge meets water quality standards of the receiving waters, the Department of Transportation is not required to determine or be limited to the existing discharge rate for discharges to tidally controlled bodies of water for any state transportation project as long as the discharge rate post project does not exceed the preproject discharge rate by 30 percent.

(b) Any state transportation project that has undergone review pursuant to a process approved under 23 U.S.C. s. 6002 will be deemed to have satisfied the cumulative impact review required pursuant to s. 373.414(8)(a).

(c) State transportation projects are exempt from project size acreage thresholds for general permits under this part.

(d) State transportation projects with less than 5 acres of wetland impacts may obtain general permits under this part.

(e) Stormwater treatment facilities for state transportation projects shall not be subject to minimum width or acreage restrictions.

(3) By January 1, 2007, the department, the water management districts, and the Department of Transportation shall develop a memorandum of understanding governing the use, and the granting of such use, of sovereign submerged or other state-

owned lands pursuant to chapter 253 or chapter 258 for state transportation projects. The memorandum of understanding shall address engineering techniques to minimize the project's environmental impacts, mitigation of unavoidable environmental impacts, and other related issues.

(4) By July 1, 2007, the department, the water management districts, and the Department of Transportation shall jointly develop a memorandum of understanding describing a method for determining the seasonal high groundwater table elevation to be used by the department and the water management districts when permitting state transportation projects under this part.

(5) By July 1, 2008, the department, the water management districts, and the Department of Transportation shall research and identify the specific constituents of highway stormwater runoff and shall jointly develop a memorandum of understanding containing best management practices to treat or minimize these identified constituents. These best management practices shall be deemed sufficient to satisfy water treatment requirements for permits required by this part.

Section 27. Paragraph (d) of subsection (2) of section 348.0003, Florida Statutes, is amended to read:

348.0003 Expressway authority; formation; membership.--

(2) The governing body of an authority shall consist of not fewer than five nor more than nine voting members. The district secretary of the affected department district shall serve as a nonvoting member of the governing body of each authority located within the district. Each member of the governing body must at all times during his or her term of

office be a permanent resident of the county which he or she is appointed to represent.

(d) Notwithstanding any provision to the contrary in this subsection, in any county as defined in s. 125.011(1), the governing body of an authority shall consist of seven voting ~~up to 13~~ members and two nonvoting members, and the following provisions of this paragraph shall apply specifically to such authority. Two ~~Except for the district secretary of the department, the members must be residents of the county. Seven~~ voting members shall be county commissioners appointed by the chair of the governing body of the county. One voting member shall be a mayor of a municipality within the county at all times while serving on the authority and shall be appointed by the Miami-Dade County League of Cities. Four ~~At the discretion of the governing body of the county, up to two of the members appointed by the governing body of the county may be elected officials residing in the county. Five~~ voting members of the authority shall be appointed by the Governor and must be residents of the county or municipality at all times while serving. The Governor's appointees shall not be elected or appointed officials or employees of the county or of a municipality within the county. ~~One member shall be~~ The district secretary of the department serving in the district that contains such county shall be a nonvoting member of the authority. One member shall be the chair of the Miami-Dade legislative delegation, or another member of the delegation appointed by the chair, and shall be a nonvoting member of the authority. ~~This member shall be an ex officio voting member of~~

~~the authority. If the governing board of an authority includes any member originally appointed by the governing body of the county as a nonvoting member, when the term of such member expires, that member shall be replaced by a member appointed by the Governor until the governing body of the authority is composed of seven members appointed by the governing body of the county and five members appointed by the Governor.~~ The qualifications, terms of office, and obligations and rights of members of the authority shall be determined by resolution or ordinance of the governing body of the county in a manner that is consistent with subsections (3) and (4).

Section 28. Paragraph (f) of subsection (2) and paragraphs (a) and (h) of subsection (9) of section 348.0004, Florida Statutes, are amended to read:

348.0004 Purposes and powers.--

(2) Each authority may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of its purposes, including, but not limited to, the following rights and powers:

(f)1. To fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the services and facilities system, which tolls, rates, fees, rentals, and other charges must always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to the Florida Expressway Authority Act. However, such right and power may be assigned or delegated by the authority to the department. Notwithstanding s. 338.165 or any other provision of law to the contrary, in any county as defined in s. 125.011(1), to the

extent surplus revenues exist, they may be used for purposes enumerated in subsection (7), provided the expenditures are consistent with the metropolitan planning organization's adopted long-range plan. Notwithstanding any other provision of law to the contrary, but subject to any contractual requirements contained in documents securing any outstanding indebtedness payable from tolls, in any county as defined in s. 125.011(1), the board of county commissioners may, by ordinance adopted on or before September 30, 1999, alter or abolish existing tolls and currently approved increases thereto if the board provides a local source of funding to the county expressway system for transportation in an amount sufficient to replace revenues necessary to meet bond obligations secured by such tolls and increases.

2. Prior to raising tolls, whether paid by cash or electronic toll collection, an expressway authority in any county as defined in s. 125.011(1) shall publish a notice of the intent to raise tolls in a newspaper of general circulation, as defined in s. 97.021(18), in the county. The notice shall provide the amount of increase to be implemented for cash payment, electronic payment, or both, as applicable. The notice also shall provide a postal address, an electronic mail or Internet address, and a local telephone number for the purpose of receiving public comment on the issue of the toll increase. The notice shall be published two times, at least 7 days apart, with the first publication occurring not more than 90 days prior to the proposed effective date of the toll increase and the second publication occurring not fewer than 60 days prior to the

proposed effective date of the toll increase. The provisions of this subparagraph shall not apply to any change in the toll rate for the use of any portion of the expressway system that has been approved by this authority prior to July 1, 2006.

(9) The Legislature declares that there is a public need for rapid construction of safe and efficient transportation facilities for travel within the state and that it is in the public's interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical transportation facilities.

(a) Notwithstanding any other provision of law to the contrary ~~the Florida Expressway Authority Act~~, any expressway authority, transportation authority, bridge authority, or toll authority established by statute or under this part may receive or solicit proposals and enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of expressway authority transportation facilities or new transportation facilities within the jurisdiction of the expressway authority. An expressway authority is authorized to adopt rules to implement this subsection and shall, by rule, establish an application fee for the submission of unsolicited proposals under this subsection. The fee must be sufficient to pay the costs of evaluating the proposals. An expressway authority may engage private consultants to assist in the evaluation. Before approval, an expressway authority must determine that a proposed project:

1. Is in the public's best interest.

2. Would not require state funds to be used unless the project is on or provides increased mobility on the State Highway System.

3. Would have adequate safeguards to ensure that no additional costs or service disruptions would be realized by the traveling public and citizens of the state in the event of default or the cancellation of the agreement by the expressway authority.

(h) Except as herein provided, this subsection is not intended to amend existing laws by granting additional powers to or further restricting the governmental entities from regulating and entering into cooperative arrangements with the private sector for the planning, construction, and operation of transportation facilities. Use of the powers granted in this subsection by a statutorily created expressway authority, transportation authority, bridge authority, or toll authority, except one statutorily created under this part, shall not be subject to any of the requirements of this part except those contained in this subsection.

Section 29. Subsection (6) is added to section 348.754, Florida Statutes, to read:

348.754 Purposes and powers.--

(6)(a) Notwithstanding s. 255.05, the Orlando-Orange County Expressway Authority may waive payment and performance bonds on construction contracts for the construction of a public building, for the prosecution and completion of a public work, or for repairs on a public building or public work that has a cost of $500,000 or less and when the project is awarded

pursuant to an economic development program for the encouragement of local small businesses that has been adopted by the governing body of the Orlando-Orange County Expressway Authority pursuant to a resolution or policy.

(b) The authority's adopted criteria for participation in the economic development program for local small businesses requires that a participant:

1. Be an independent business.

2. Be principally domiciled in the Orange County Standard Metropolitan Statistical Area.

3. Employ 25 or fewer full-time employees.

4. Have gross annual sales averaging $3 million or less over the immediately preceding 3 calendar years with regard to any construction element of the program.

5. Be accepted as a participant in the Orlando-Orange County Expressway Authority's microcontracts program or such other small business program as may be hereinafter enacted by the Orlando-Orange County Expressway Authority.

6. Participate in an educational curriculum or technical assistance program for business development that will assist the small business in becoming eligible for bonding.

(c) The authority's adopted procedures for waiving payment and performance bonds on projects with values not less than $200,000 and not exceeding $500,000 shall provide that payment and performance bonds may only be waived on projects that have been set aside to be competitively bid on by participants in an economic development program for local small businesses. The authority's executive director or his or her designee shall

determine whether specific construction projects are suitable for:

1. Bidding under the authority's microcontracts program by registered local small businesses; and

2. Waiver of the payment and performance bond.

The decision of the authority's executive director or deputy executive director to waive the payment and performance bond shall be based upon his or her investigation and conclusion that there exists sufficient competition so that the authority receives a fair price and does not undertake any unusual risk with respect to such project.

(d) For any contract for which a payment and performance bond has been waived pursuant to the authority set forth in this section, the Orlando-Orange County Expressway Authority shall pay all persons defined in s. 713.01 who furnish labor, services, or materials for the prosecution of the work provided for in the contract to the same extent and upon the same conditions that a surety on the payment bond under s. 255.05 would have been obligated to pay such persons if the payment and performance bond had not been waived. The authority shall record notice of this obligation in the manner and location that surety bonds are recorded. The notice shall include the information describing the contract that s. 255.05(1) requires be stated on the front page of the bond. Notwithstanding that s. 255.05(9) generally applies when a performance and payment bond is required, s. 255.05(9) shall apply under this subsection to any contract on which performance or payment bonds are waived and

any claim to payment under this subsection shall be treated as a contract claim pursuant to s. 255.05(9).

(e) A small business that has been the successful bidder on six projects for which the payment and performance bond was waived by the authority pursuant to paragraph (a) shall be ineligible to bid on additional projects for which the payment and performance bond is to be waived. The local small business may continue to participate in other elements of the economic development program for local small businesses as long as it is eligible.

(f) The authority shall conduct bond eligibility training for businesses qualifying for bond waiver under this subsection to encourage and promote bond eligibility for such businesses.

(g) The authority shall prepare a biennial report on the activities undertaken pursuant to this subsection to be submitted to the Orange County legislative delegation. The initial report shall be due December 31, 2008.

Section 30. Subsection (1) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.--It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if

required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(1) ~~CHARTER~~ COUNTY TRANSPORTATION ~~TRANSIT~~ SYSTEM SURTAX.--

(a) The governing authority in each ~~charter~~ county ~~which adopted a charter prior to January 1, 1984, and each county the government of which is consolidated with that of one or more municipalities,~~ may levy a discretionary sales surtax pursuant to an ordinance enacted by a majority of the members of the county governing authority and~~,~~ subject to approval by a majority vote of the electorate of the county ~~or by a charter amendment approved by a majority vote of the electorate of the county~~.

(b) The rate shall be up to 1 percent.

(c) The proposal to adopt a discretionary sales surtax as provided in this subsection ~~and to create a trust fund within the county accounts~~ shall be placed on the ballot in accordance with law at a time to be set at the discretion of the governing body of the county.

(d) Proceeds from the surtax shall be distributed to the county and to each municipality within the county in which the surtax is collected, according to:

1. A separate interlocal agreement between the county governing body and the governing body of any municipality within the county; or

2. If there is no interlocal agreement between the county governing body and the governing body of any municipality within

the county, the proceeds shall be distributed according to an apportionment factor for each eligible local government as specified in this subparagraph.

a. The apportionment factor for an eligible county shall be composed of two equally weighted portions as follows:

(I) Each eligible county's population in the unincorporated areas of the county as a percentage of the total county population as determined pursuant to s. 186.901.

(II) Each eligible county's percentage of centerline miles derived from the combined total number of centerline miles owned and maintained by the county and each municipality within the county as annually reported in the City/County Mileage Report promulgated by the Transportation Statistics Office within the Department of Transportation.

b. The apportionment factor for an eligible municipality shall be composed of two equally weighted portions as follows:

(I) Each eligible municipality's population as a percentage of the total county population as determined pursuant to s. 186.901.

(II) Each eligible municipality's percentage of centerline miles derived from the combined total number of centerline miles owned and maintained by the county and each municipality within the county as annually reported in the City/County Mileage Report promulgated by the Transportation Statistics Office within the Department of Transportation.

(e) A charter county that has adopted a surtax pursuant to this subsection by referendum as of July 1, 2006, shall not be required to distribute surtax proceeds pursuant to paragraph (d)

but shall follow the procedures established in paragraph (f). Each charter county that adopted a charter prior to January 1, 1984, and each county the government of which is consolidated with that of one or more municipalities, that adopts a surtax pursuant to this subsection by referendum after July 1, 2006, shall not be required to distribute surtax proceeds pursuant to paragraph (d) but shall follow the procedures established in paragraph (f). Pursuant to an interlocal agreement entered into pursuant to chapter 163, the governing body of the charter county may distribute proceeds from the tax to a municipality, or an expressway or transportation authority created by law, to be expended for the purposes authorized by paragraph (f). Interlocal agreements entered into as of July 1, 2006, pursuant to chapter 163 by the governing body of the county to distribute proceeds from the tax to a municipality or an expressway or transportation authority created by law shall not be affected by the changes made to this subsection by this act effective July 1, 2006.

(f) Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the governing body of the municipality or the county ~~commission~~ deems appropriate:

1. Deposited by the governing body of the municipality or the county in the trust fund and shall be used for the purposes of development, construction, equipment, maintenance, operation, supportive services, including a ~~countywide~~ bus system, and related costs of a fixed guideway rapid transit system.~~,~~

2. Remitted by the governing body of the municipality or county to an expressway or transportation authority created by law to be used, at the discretion of such authority, for the development, construction, operation, or maintenance of roads, bicycle and pedestrian facilities, or bridges in the county or municipality, for the operation and maintenance of a bus system, for the payment of principal and interest on existing bonds issued for the construction of such roads, bicycle or pedestrian facilities, or bridges, and, upon approval by the governing body of the municipality or county ~~commission~~, such proceeds may be pledged for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges.~~;~~

~~3. Used by the charter county for the development, construction, operation, and maintenance of roads and bridges in the county; for the expansion, operation, and maintenance of bus and fixed guideway systems; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses; and~~

3.~~4.~~ Used by the governing body of the municipality or ~~charter~~ county for the planning, development, construction, operation, and maintenance of roads, bicycle and pedestrian facilities, and bridges in the county; for the planning, development, expansion, operation, and maintenance of bus and

fixed guideway systems; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, bicycle and pedestrian facilities, or bridges; and such proceeds may be pledged by the governing body of the municipality or county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, bicycle and pedestrian facilities, or bridges. ~~Pursuant to an interlocal agreement entered into pursuant to chapter 163, the governing body of the charter county may distribute proceeds from the tax to a municipality, or an expressway or transportation authority created by law to be expended for the purpose authorized by this paragraph.~~

4. Used by the county or municipality to fund regionally significant transportation projects identified in a regional transportation plan developed in accordance with s. 339.155(5) or to provide matching funds for the Transportation Regional Incentive Program in accordance with s. 339.2819 or the New Starts Transit Program as provided in s. 341.051.

5. Used by the county or municipality to fund projects identified in a capital improvements element of a comprehensive plan that has been determined to be in compliance with part II of chapter 163 or to implement a long-term concurrency management system adopted by a local government in accordance with s. 163.3177(3) or (9).

Section 31. Department of Transportation study of transportation facilities providing access to pari-mutuel

facilities and Indian reservations; report and recommendations.--

(1) The Department of Transportation is directed to conduct a study of the impacts that slot machine gaming at pari-mutuel facilities and on Indian reservation lands is having on public roads and other transportation facilities, regarding traffic congestion and other mobility issues, facility maintenance and repair costs, emergency evacuation readiness, and costs of potential future widening or other improvements, and of other impacts on the motoring, nongaming public.

(2) The study shall include, but is not limited to, the following information:

(a) A listing, description, and functional classification of the access roads to and from pari-mutuel facilities and Indian reservations that conduct slot machine gaming in the state.

(b) An identification of the access roads identified under paragraph (a) that are either scheduled for improvements within the Department of Transportation's 5-year work program or are listed on the 20-year, long-range transportation plan of the department or a metropolitan planning organization.

(c) The most recent traffic counts on the access roads and projected future usage, as well as any projections of impacts on secondary, feeder, or connector roads, interstate highway exit and entrance ramps, or other area transportation facilities.

(d) The safety and maintenance ratings of each access road and a detailed review of impacts on the ability of local and

state emergency management agencies to provide emergency or evacuation services.

(e) The estimated infrastructure costs to maintain, improve, or widen these access roads based on future projected needs.

(f) The feasibility of implementing tolls on these access roads or, if already tolled, raising the toll to offset and mitigate the impacts of traffic generated by pari-mutuel facility and Indian reservation slot machine gaming activities on nontribal communities in the state and to finance projected future improvements to the access roads.

(3) The department shall present its findings and recommendations in a report to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 15, 2007. The report may include any department recommendations for proposed legislation.

Section 32. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7079 PCB TR 06-03 Highway Safety and Motor Vehicles
SPONSOR(S): Transportation Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Transportation Committee	14 Y, 0 N,	Thompson	Miller
1) Transportation & Economic Development Appropriations Committee	15 Y, 0 N	McAuliffe	Gordon
2) State Infrastructure Council		Thompson J.T.	Havlicak RH
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 7079 contains numerous changes to highway safety and motor vehicle laws administered by the Department of Highway Safety and Motor Vehicles (DHSMV). Examples of major provisions in the bill include:

- Grants DHSMV the authority to make rules regarding settlement or compromise of taxes, penalties or interests; and authorizes DHSMV to enter into agreements for scheduling payments of taxes and penalties;
- Clarifies that "Motorized scooters" and "miniature motorcycles" are not "street legal" and provides the public with better notice of their legal status through sales disclosure requirements;
- Requires motorcycle riders under 21 years old to display a license plate unique in design and color; requires that the owner must prove when registering a motorcycle that they have obtained a motorcycle endorsement on their driver license; and requires every first time applicant for licensure to operate a motorcycle to provide proof of completion of a motorcycle safety course;
- Allows All-Terrain Vehicles (ATV's) to be operated by a licensed driver or a minor under the supervision of a licensed driver on un-paved roadways where the posted speed limit is less than 35 mph;
- Brings intrastate hours-of-service requirements for commercial motor carriers into compliance with federal tolerance guidelines, and provides for changes recently enacted into federal law for utilities and agricultural transportation;
- Allows certain forestry equipment to operate on public roads between one point of harvest to another;
- Increases penalties for speeding 30 miles per hour over the posted speed limit, red light violations resulting in a crash and failure to secure loads while traveling on the public roads and highways;
- Allows veterans of recent military conflicts to display a tag that shows their service in Operation Iraqi Freedom and Operation Enduring Freedom;
- Revises the definitions of driver's license, identification card, and temporary driver license or temporary identification card to comply with federal requirements;
- Clarifies certain law enforcement and judicial procedures for suspension of driver licenses for driving with unlawful blood or breath alcohol level and the review of such suspensions.

Some of the bill's provisions are technical or administrative in nature and will have no fiscal impacts. Some of the provisions are expected to have an indeterminate fiscal impact on state and local governments and on the private sector. For details, see the FISCAL COMMENTS section of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government—HB 7079:

- The bill gives DHSMV the authority to make rules regarding settlement or compromise of taxes, penalties or interest;
- The bill requires that upon original registration of any motorcycle, motor driven cycle or moped the owner must prove they have obtained necessary endorsement on the driver license;
- The bill requires every first time applicant for licensure to operate a motorcycle to provide proof of completion of the motorcycle safety course.
- The bill gives law enforcement agencies the authority to appeal any decision of DHSMV invalidating a driver license suspension by a petition for writ of certiori to the circuit court in the county where a formal review was conducted.

Promote Personal Responsibility—HB 7079:

- The bill increases driver license points, requires a mandatory hearing, and doubles the fine for a second offense for exceeding the posted speed limit by 30 miles per hour or more;
- The bill increases the points for a red light violation resulting in a crash to six points (same as speeding resulting in a crash);
- The bill increases the fines for failing to secure loads from $100 to $200, and increases the driver's license suspension for a second offense from a minimum of 180 days and a maximum of 1 year to a minimum of one year and a maximum of two years;

Safeguard Individual Liberty—HB 7079:

- The bill provides for the operation of "ATV's" by licensed drivers and minors under the supervision of a licensed driver on unpaved roadways where the speed limit is 35 mph or less;
- The bill removes the requirement for a franchise motor vehicle dealer to attend eight hours of continuing education when applying for an initial license;

B. EFFECT OF PROPOSED CHANGES:

Settlement or Compromise of Taxes, Penalty or Interest

Background

In 1981 the legislature passed HB 439[1] transferring the taxation of motor fuel and special fuel from the Public Service Commission to the Department of Revenue. In 1987 the legislature passed HB 761[2] transferring the fuel use tax functions of the Department of Revenue to DHSMV. Since the transfer of the administration of Chapter 207, F.S., to DHSMV from the Department of Revenue, DHSMV's authority to settle or compromise assessments and enter into stipulation agreements has been uncertain. The bill addresses three areas related to taxes, penalties and interest assessed by DHSMV: record-keeping requirements; informal settlement conferences; and scheduling payments.

[1] Chapter 81-151, Laws of Florida
[2] Chapter 87-198, Laws of Florida

Records

Section 207.008, F.S., requires each registered motor carrier to maintain records and papers as required by the Department of Revenue for the administration of the settlement or compromise of taxes, penalty or interest. Motor carriers are to preserve these records until expiration of the time within which the Department of Revenue is able to make an assessment with respect to that tax pursuant to Florida law[3]. The bill amends s. 207.008, F.S., to provide that records must be maintained for four years.

Informal Conferences

Section 207.021, F.S., only allows DHSMV to settle or compromise penalties or interest imposed under Chapter 207, F.S., using the provisions of Section 213.21, F.S., which relates to the Department of Revenue. There is no specific authority in Chapter 207, F.S., for DHSMV to conduct informal conferences for the resolution of disputes arising from the assessment of taxes, penalties, or interest.

The bill grants DHSMV statutory rulemaking authority regarding settlement or compromise of chapter 207, F.S., taxes, penalties or interest. The bill also specifies that during any proceeding arising under this section, the motor carrier has the right to be represented at and record all procedures at the motor carrier's expense.

The bill authorizes the executive director of DHSMV or his or her designee to enter into closing agreements with a taxpayer to settle or compromise tax liabilities. These agreements are to be in writing and prohibit further assessments by DHSMV for taxes settled and prohibit the taxpayer from seeking recovery of amounts paid under terms of the agreement. A taxpayer's liability for chapter 207, F.S., tax or interest may be compromised by DHSMV on the grounds of doubt as to liability for or the ability to collect the tax or interest. The bill specifies that doubt as to the liability of a taxpayer for tax and interest exists if the taxpayer reasonably relied on a written determination of DHSMV. A taxpayer's liability can only be settled or compromised to the extent allowable under International Fuel Tax Agreement (IFTA)[4]. A taxpayer's liability for penalties may be settled or compromised if DHSMV determines that the noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud. DHSMV is also authorized to enter into agreements for scheduling payments of taxes, penalties, and interest resulting from audit assessments.

The International Registration Plan

The International Registration Plan (IRP) is a program for licensing commercial vehicles in interstate operations among member jurisdictions. The member jurisdictions of IRP are all states (except Alaska and Hawaii), the District of Columbia, and the Canadian provinces (except Yukon and Northwest Territory).

Under this program, an interstate carrier files an apportioned registration application in the state or province where the carrier is based (the base jurisdiction). The fleet vehicles and the miles traveled in each state are listed on the application. The base jurisdiction collects the full license registration fee. They distribute the fees to the other jurisdictions based on the percentage of miles the carrier will travel, or has traveled, in each jurisdiction. The base jurisdiction also issues a license plate showing the word "apportioned" and a cab card showing the jurisdictions and weights for which the carrier has paid fees.

Section 320.405, F.S., relating to the IRP, does not authorize DHSMV to enter into agreements for scheduling payments of taxes and penalties due to DHSMV as a result of audit assessments issues.

[3] s. 95.091(3), F.S.
[4] s. 207.0281(1), F.S.

The bill would allow DHSMV to enter into agreements for scheduling payments of such taxes and penalties due to the department as a result of audit assessments issued under this section.

Motorized Scooters and Miniature Motorcycles

Background

Motorized scooters are two-wheel vehicles, equipped with either a small two-cycle gasoline engine or an electric motor and a battery. To operate within the letter of the law some manufacturers are retrofitting these scooters with electric motors and kits. The gasoline-powered scooters usually cost between $400 and $1,300. Electric scooters range from under $200 to about $1,000.

The U.S. Consumer Product Safety Commission (CPSC) is charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products under the agency's jurisdiction. A new year-long study released by CPSC[5] finds there were an estimated 10,000 emergency room injuries involving powered scooters nationally from July 2003 through June 2004.

Chapter 322, F.S., relating to drivers' licenses, defines the term "motor vehicle" as any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power, motorized wheelchairs, and motorized bicycles. This definition requires the operator of any motor vehicle including motorized scooters, operating on the public roadways to have a class E driver's license.

Section 320.02, F.S., relating to motor vehicle registration, provides that every owner or person in charge of a motor vehicle which is operated or driven on the roads of this state must register the vehicle in this state. While that chapter requires any motor vehicle to be registered, s. 320.08, F.S., does not provide a license tax classification for motorized scooters. DHSMV has therefore advised that since such vehicles may not be registered, they may not be operated on the public streets and roads.

Section 316.1995, F.S., provides that no person may drive any vehicle other than by human power upon a bicycle path, sidewalk, or sidewalk area, except upon a permanent or duly authorized temporary driveway and provides penalties. Motorized scooters are not exempted from the definition of "vehicle" in section 316.003(75), F.S., which defines the term as every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks. Thus, motorized scooters appear to be prohibited from operating on sidewalks.

Section 316.003(83), F.S., defines electric personal assistive mobility devices as any self-balancing, two-nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of 750 watts (1 horsepower), the maximum speed of which, on a paved level surface when powered solely by such a propulsion system while being ridden by an operator who weighs 170 pounds, is less than 20 miles per hour. Electric personal assistive mobility devices are not vehicles as defined in this section. Section 316.2068, F.S., relating to electric personal assistive mobility devices, allows such devices to be operated on certain roads and on sidewalks without a driver's license and without being registered.

The bill creates s. 316.2128, F.S., to provide clarification that motorized scooters and miniature motorcycles are not street legal and to provide potential buyers with notice of these vehicles' current legal status. Section 316.2128, F.S., provides the following:

- Prohibits the operation of motorized scooters and miniature motorcycles on public roads, streets, or sidewalks and such vehicles may not be registered as a motor vehicle,

[5] CONSUMER PRODUCT SAFETY REVIEW Fall 2005; VOL. 10, NO. 2: http://www.cpsc.gov/cpscpub/pubs/cpsr_nws38.pdf

- Requires the operator of motorized scooters and miniature motorcycles to keep proof of ownership in the form of a receipt, sales invoice, bill of sale, or other written documentation in his or her possession at all times;
- Prohibits a person from knowingly permitting his or her child or ward under 16 or between the ages of 16 and 18 years old to drive a motorized scooter or miniature motorcycle in violation of this section;
- Provides that a violation is a non-criminal traffic infraction punishable as a moving violation. A person violating this provision would be subject to a $60 fine plus applicable fees and court costs. The fees and court costs vary from county to county, but the total paid for each citation would range from $112.50 to $118.50, and an assessment of three points against the driver's license; and
- Requires a person selling "motorized scooters" and "miniature motorcycles" to display a notice that these vehicles are not legal to operate on roads or sidewalks. This notice and a copy of the statute must be provided to the consumer prior to purchase. Violations of the sales disclosure provision are punishable under the "Florida Deceptive and Unfair Trade Practices Act"[6] and are liable for a civil penalty of not more than $10,000 for each violation plus applicable court costs and attorney fees.

The bill amends s. 316.003, F.S., to make the following changes:

- Includes motorized scooters in the definition of "motor vehicle." This change will subject motorized scooters to the traffic laws that apply throughout the state and counties and uniform traffic ordinances that apply in all municipalities;
- Excludes miniature motorcycles from the definition of motorcycle so that miniature motorcycles will not be classified as street legal motorcycles;
- Clarifies the definition of motorized scooter to inform the public that because of its small size, its design or lack of required safety equipment, or other non-compliance with federal regulations these scooters are not eligible for a manufacturer's certificate of origin or for registration; and
- Creates the term "miniature motorcycle" and defines it as any vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three wheels in contact with the ground, and which because of its small size, its design or lack of required safety equipment, or other non-compliance with federal regulations, is not eligible for a manufacturer's certificate of origin or for registration as a motorcycle. The term does not include off-highway vehicles. This definition will clarify that these vehicles are not "street legal" and will provide the public with notice of their legal status.

Motorcycle Riders

Equipment

The National Highway Traffic Safety Administration has a legislative mandate under Title 49 of the United States Code, Chapter 301, Motor Vehicle Safety, to issue Federal Motor Vehicle Safety Standards (FMVSS) and Regulations to which manufacturers of motor vehicle and equipment items must conform and certify compliance. FMVSS Standard No. 218, establishes minimum performance requirements for helmets designed for use by motorcyclists and other motor vehicle users.

Currently, s. 316.211, F.S., provides the following requirements for motorcycle and moped riders:

- A person is not to operate or ride on a motorcycle unless the person is properly wearing protective headgear which complies with FMVSS Standard 218;
- A person may not operate a motorcycle unless the person is properly wearing an eye-protective device of a type approved by DHSMV;

[6] S. 501.201, F.S.

- These regulations do not apply to persons riding within an enclosed cab or 16 years of age or older and operating or riding a motorcycle powered by a motor with a displacement of 50 cubic centimeters or less or not rated in excess of two brake horsepower and which is not capable of propelling itself at a speed greater than 30 miles per hour on level ground;
- A person over 21 years of age is allowed to operate or ride a motorcycle without wearing protective headgear if they are covered by an insurance policy providing for at least $10,000 in medical benefits for injuries incurred as a result of a crash while operating or riding on a motorcycle.
- A person under 16 years of age may not operate or ride a moped unless the person is properly wearing protective headgear which complies with FMVSS Standard 218; and
- DHSMV must make available a list of approved protective headgear, and the list must be provided on request.

The bill would amend s. 316.211, F.S., to require, effective January 1, 2007, that motorcycles registered to persons who have not attained 21 years of age must display a license plate that is unique in design and color. Because the helmet exemption applies to riders over 21, this would allow for better enforcement of the state's helmet law requirements.

Registration

Currently, under s. 320.02, F.S., every owner or person in charge of a motor vehicle operated or driven on the roads of this state is required to register the vehicle in this state. The owner or person in charge must apply to DHSMV or to its authorized agent for registration on a form prescribed by DHSMV.

The bill amends s. 320.02, F.S., to provide that before an original registration of a motorcycle, motor driven cycle or moped can be issued, the owner must present proof of successfully completing a test of his or her knowledge concerning the safe operation of the motorcycle or moped and a test of his or her driving skills on such vehicle. This provision will become effective January 1, 2007.

Examination of Applicants

Currently, s. 322.12, F.S., requires that every first-time applicant for licensure to operate a motorcycle who is under 21 years of age must provide proof of completion of a motorcycle safety course, as provided in 322.0255, F.S., before the applicant is licensed to operate a motorcycle. The bill amends this provision and would require that regardless of age, all first-time applicants for licensure to operate a motorcycle must provide proof of completion of a motorcycle safety course. This provision will become effective July 1, 2008.

According to DHSMV, fatalities among motorcyclists have risen in Florida. Statistics show that within the last two years, there have been no fatalities among those riders completing the Florida Motorcycle Safety Education Program. These changes to licensing and registration laws are intended to reduce crashes among motorcyclists.

All-Terrain Vehicles (ATV's)

Operation

Current law, s. 316.2074, F.S., does not allow all-terrain vehicles to be operated on public roads, streets, or highways, except as permitted by a managing state or federal agency. All-terrain vehicles are defined in s. 316.2074, F.S., as any motorized off-highway vehicle 50 inches or less in width, having a dry weight of 900 pounds or less, designed to travel on three or more low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control, and intended for use by a single operator with no passenger. The definition of "all-terrain vehicle" also includes any "two-rider ATV" as defined in s. 317.0003, F.S.

According to the Division of Forestry the speed limit on all roads within forests is 30 mph unless posted otherwise. These speed limits are based on road design and basic knowledge of maximum safe speeds within each park. The T. Mark Schmidt Off-Highway Vehicle Safety and Recreation Act, Chapter 261, F.S. provides the State of Florida with a set of guidelines to follow for maintaining and providing state lands for Off-Highway Motorcycle and All-Terrain Vehicle users. This act does not allow all-terrain vehicles to be operated on public roads, streets, or highways, except as permitted by a managing state or federal agency.

Section 316.2074, F.S., also provides the following related to ATV's:

- No person under 16 years of age is allowed to operate, or ride an all-terrain vehicle unless the person wears an approved safety helmet and eye protection;
- If a crash results in the death of any person or injury of any person which results in treatment of the person by a physician, the operator of each all-terrain vehicle involved in the crash must give notice of the crash as required by s. 316.066, F.S.;
- An all-terrain vehicle having four wheels may be used by police officers on public beaches designated as public roadways for the purpose of enforcing the traffic laws of the state. All-terrain vehicles may also be used by the police to travel on public roadways within 5 miles of beach access only when getting to and from the beach;
- An all-terrain vehicle having four wheels may be used by law enforcement officers on public roads within public lands while in the course and scope of their duties; and
- A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318, F.S.

The bill creates s. 316.2123, F.S., allowing "ATV's" to be operated by a licensed driver or a minor under the supervision of a licensed driver on un-paved roadways where the posted speed limit is less than 35 mph. The drivers are required to provide proof of ownership if requested by law enforcement.

Dump Trucks

Taillamps

Currently s. 316.221, F.S., relating to taillamps, requires taillamps or separate lamps to be constructed and placed to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillamp or taillamps, together with any separate lamp or lamps for illuminating the rear registration plate, must be wired to light up whenever the headlamps or auxiliary driving lamps are lighted. The bill exempts dump trucks and vehicles with dump bodies from the requirements of this section relating to illumination of license plates.

License Plates

Section 320.0706, F.S., requires the owner of any commercial truck of gross vehicle weight of 26,001 pounds or more to display the registration license plate on both the front and rear of the truck in conformance with all the requirements of s. 316.605, F.S. However, the owner of a truck tractor is required to display the registration license plate only on the front of such vehicle. Current law does not provide for a height requirement for the display of license plates on commercial trucks of gross vehicle weight of 26,001 pounds or more.

The bill amends s. 320.0706, F.S., allowing the owners of dump trucks to place the rear license plate on the gate no higher than 60 inches from the ground to the top of the license plate to allow for better visibility.

Motor Carrier Compliance

Hours of Service

The federal Motor Carrier Safety Assistance Program (MCSAP) provides funding to all the states, territories and the District of Columbia for state enforcement of the Federal Motor Carrier Safety Regulations (FMCSRs). The purpose of the MCSAP financial assistance to states is to reduce the number and severity of crashes and hazardous materials incidents involving commercial motor vehicles (CMVs).

To be eligible for MCSAP funding, a state must adopt and enforce compatible regulations identical for interstate transportation and within the federal tolerance guidelines[7] for intrastate transportation. The federal tolerance guidelines set forth limited deviations from the FMCSRs that are allowed in Florida's laws and regulations. These variances apply only to motor carriers, CMV drivers and CMVs engaged in intrastate commerce and are not subject to federal jurisdiction.

According to federal law, 49 C.F.R. 350.345, 100 percent funding for all states may be granted if the following criteria are met:

- If the state law achieves the same purpose as the corresponding federal regulations;
- If the additional variances do not apply to interstate commerce; and
- If the additional variances are not likely to have an adverse impact on safety.

Florida currently receives 50% ($3.3 million) of its allocated federal funding ($6.6 million) through MCSAP. The state does not receive 100 percent MCSAP funding because it is not in compliance with the federal hours of service regulations for intrastate truck drivers.

Sections 316.302, 316.003 and 316.515, F.S., provide the following variances that are not consistent with the safety goals of the U.S. Department of Transportation:

- All intrastate drivers (except hazardous materials drivers) may drive 15 hours (12 allowed under the tolerance guidelines);
- Citrus growers and forestry drivers are exempt from Florida's maximum driving time regulations, which are incompatible with federal allowances;
- 200-mile radius drivers are exempt from log requirements (150 allowed by the tolerance guidelines);
- Drivers can drive 72 hours in seven days, or 84 hours in eight days (70 hours in seven days and 80 hours in eight days are allowed by the tolerance guidelines); This restarts every 24 hours;
- Drivers of farm or forest products and unprocessed agricultural products during harvest season are exempt from the federal requirements relating to driver qualification, hours of service, inspection, repair and maintenance regulations.[8]
- Vehicles less than 26,000 pounds gross vehicle weight ratio, transporting petroleum products are exempt from safety regulations including driver qualification, hours of service, inspection, repair and maintenance regulations.[9]

The bill amends ss. 316.302, 316.003 and 316.515, F.S., to bring intrastate hours-of-service requirements into compliance with federal tolerance guidelines, and to provide for changes recently enacted into federal law for utilities and agricultural transportation. The bill also contains the following changes:

- Deletes the exemption from federal requirements relating to driving and resting, changing the time limit a commercial motor vehicle driver may drive in a 24 hour period from 15 hours to the federally required 12 hours;
    - This provision does not apply to utility service vehicles.
- Changes the weekly limit of on duty hours from 72 hours to 70 hours in any period of seven consecutive days, and from 84 to 80 hours in any period of eight consecutive days;

[7] 49 C.F.R. 350.341
[8] 49 C.F.R. 391, 395, 396
[9] 49 C.F.R. 391, 395, 396

- This provision does not apply to drivers operating solely within the state and transporting agricultural commodities or farm supplies or to utility service vehicles.
- Updates the reference to current (October 1, 2005) federal rules and regulations applicable to commercial motor vehicles.

CDL Vision Exemption

Currently s. 316.302, F.S., contains a grandfather clause that exempts a person who was a regularly employed driver of a commercial motor vehicle on July 4, 1987, and whose driving record shows no traffic convictions, pursuant to s. 322.61, F.S., during the two-year period immediately preceding the application for the commercial driver's license, and who is otherwise qualified as a driver under federal law[10], and who operates a commercial vehicle in intrastate commerce only, from requirements of the federal law relating to minimum vision requirements in both eyes. However, such operators are still subject to the requirements of ss. 322.12 and 322.121, F.S., relating to the examination of driver license applicants. As proof of eligibility, such driver is to have in his or her possession a physical examination form dated within the past 24 months.

The bill would allow a person with normal vision in only one eye whose driving record shows no traffic convictions, pursuant to s. 322.61, F.S., during the two-year period immediately preceding the application for the commercial driver's license, and who is otherwise qualified as a driver under 49 C.F.R. part 391, and who operates a commercial vehicle in intrastate commerce only, to be exempt from the vision requirements of 49 C.F.R. part 391, subpart E, s. 391.41(b)(10). The driver would have to have in his or her possession a physical examination form dated within the past 24 months. This change would make the state exemption consistent with federal waiver provisions.

Other Commercial Motor Vehicle Provisions

Currently s. 316.003, F.S., defines saddle mounts as an arrangement whereby the front wheels of one vehicle rest in a secured position upon another vehicle and all of the wheels of the towing vehicle are upon the ground. The bill allows such towing combinations to include one full mount which is a smaller transport vehicle that is placed completely on the last towed vehicle.

Under current law s. 316.515, F.S., relating to maximum width, height, and length of commercial motor vehicles, provides that an automobile transporting new or used trucks may use a "saddle mount" if the overall length does not exceed 75 feet and no more than three saddle mounts are in tow. The bill increases the overall allowable length for saddle mount combinations to 97 feet. The bill allows these vehicles transporting new or used trucks to include one "full mount," bringing the state law in compliance with federal tolerance guidelines.

Forestry Equipment

Section 316.515, F.S., currently only allows the following machinery to operate on public roads from one point of production to another:

- Straight trucks,
- Agricultural tractors,
- Cotton module movers, not exceeding 50 feet in length,
- Any combination of up to and including three implements of husbandry including the towing power unit,
- Any single agricultural trailer with a load thereon,
- Agricultural implements attached to a towing power unit not exceeding 130 inches in width, and
- A self-propelled agricultural implement or an agricultural tractor not exceeding 130 inches in width.

[10] 49 C.F.R. part 391

This section only allows the above listed machinery to operate on public roads from one point of production to another for the following purposes:

- Transporting peanuts, grains, soybeans, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage,
- Returning to the point of production,
- Moving the tractors, movers, and implements from one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler.

The bill amends s. 316.515, F.S., to allow equipment used exclusively for the purpose of harvesting forestry products, not exceeding 136 inches in width and which is not capable of speeds exceeding 20 miles per hour, to operate on public roads to get from one point of harvest to another point of harvest not to exceed 10 miles, by a person engaged in the harvesting of forest products. These vehicles must be operated in accordance with all safety requirements prescribed s. 316.2295(5) and (6), F.S., relating to slow moving vehicle emblems on farm tractors, farm equipment and implements of husbandry.

Driver Education Program Surcharge

Currently s. 318.1215, F.S., (the "Dori Slosberg Driver Education Safety Act") allows county commissioners to adopt an ordinance requiring the clerk of the court to collect an additional $3 with each civil traffic penalty. The funds are to be used to fund driver education programs in public and nonpublic schools. The ordinance must provide for the board of county commissioners to administer the funds for direct educational expenses and must prohibit using the funds for administration. The bill amends s. 318.1215, F.S., to increase the amount of money that a county may collect with each traffic penalty from $3 to $5. Currently 53 counties are collecting the $3 surcharge.

Traffic Control—Speeding

Background on Speeding Violations

According to law enforcement, the number of speeders traveling in excess of 30 miles per hour over the speed limit on limited access highways throughout Florida is increasing. The maximum penalties for speeding are $250 and four points on the driver's license. In addition to the $250 statutory base fine, court costs and fees amount to $52.50 making the speeding penalty $302.50. Optional surcharges could add as much as $24 to this. Florida Highway Patrol Troopers are writing 20 tickets a month for triple digit speeds on I-4, five tickets a month on state Road 417, and 20 to 30 tickets each week on Florida's Turnpike south of St. Cloud. The accidents caused by these excessive speeding violations are more severe than accidents that involve motor vehicles traveling at or around the speed limit.

Neighboring states have taken measures to inhibit the most dangerous of unlawful speed violators. Increased speeding fines and reckless driving charges have been instituted in these states to allow for stricter penalties when speeds reach untenable heights. Officers interviewed also suggested that more effort be made to revoke or suspend the licenses of motorists who drive at such high rates of speed. The following changes to speeding penalties could increase traffic safety by deterring excessive speeding.

Mandatory hearings

Current law s. 318.14, F.S., relating to noncriminal traffic infractions, provides that a person who does not hold a commercial driver's license and who is issued a citation for speeding may elect to pay the fine without appearing before a hearing officer or judge and to attend a basic driver improvement course approved by DHSMV. In such a case, adjudication is withheld, points as provided by s. 322.27, F.S., are not assessed, and the civil penalty is reduced by 18 percent. A person is allowed to attend a driver improvement course in lieu of appearing before a hearing officer or judge once every twelve months. A person may make no more than five total elections under this subsection.

Section 318.19, F.S., provides that citations for the following infractions require a mandatory hearing:

- Any infraction which results in a crash and causes the death of another person;
- Any infraction which results in a crash that causes "serious bodily injury" of another person;
- Any infraction of failing to stop for a school bus; or
- Any infraction of failing to secure loads on vehicles.

The bill amends s. 318.14, F.S., to provide that any person who is issued a citation for exceeding the posted speed limit by 30 miles per hour or more may not attend a driver improvement course in lieu of appearing before a hearing officer or judge. The bill also amends s. 318.19, F.S., requiring a mandatory hearing for a citation of exceeding the posted speed limit by 30 miles per hour or more.

Speeding Fines

Currently s. 318.18, F.S., relating to penalties for speeding, provides that for moving violations involving unlawful speed, the fines are as follows:

For speed exceeding the limit by:	Fine:
1-5 m.p.h	Warning
6-9 m.p.h.	$ 25
10-14 m.p.h.	$100
15-19 m.p.h.	$125
20-29 m.p.h.	$150
30 m.p.h. and above	$250

The bill amends s. 318.18, F.S., to provide that a person who is found guilty of a second violation of exceeding the posted speed limit by 30 miles per hour or more within a 12-month period must pay a fine double the amount listed in the table above. Also, the bill defines "conviction" for these violations as a finding of guilt, with or without adjudication of guilt, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere, notwithstanding that adjudication was withheld.

Florida's Point System

Section 322.27, F.S., establishes a system of points that are assessed against a driver's license when a person is convicted of violating certain motor vehicle laws. The point system is used for the evaluation and determination of the continuing qualification of a person to operate a motor vehicle. The DHSMV is authorized to suspend the license of any person if the licensee has been convicted of the violation of motor vehicle laws amounting to 12 or more points within a 12-month period. The suspension will be for a period of not more than one year. The point system statute has the following provisions:

The point system has, as its basic element, a graduated scale of points assigning relative values to convictions of the following violations:

1. Reckless driving—four points.
2. Leaving the scene of a crash resulting in property damage of more than $50—six points.
3. Unlawful speed resulting in a crash—six points.
4. Passing a stopped school bus—four points.
5. Unlawful speed:
    a. Not in excess of 15 miles per hour of lawful or posted speed—three points.
    b. In excess of 15 miles per hour of lawful or posted speed—four points.
6. All other moving violations (including parking on a highway outside the limits of a municipality)—three points.
7. Any moving violation, excluding unlawful speed, resulting in a crash—four points.
8. Dumping litter in an amount exceeding 15 pounds, which involves the use of a motor vehicle—three points.

9. Driving during restricted hours—three points.
10. Violation of curfew—three points.
11. Open container as an operator—three points.
12. Child restraint violation—three points.

When a licensee accumulates 12 points within a 12-month period, the period of suspension will be for not more than 30 days. When a licensee accumulates 18 points within an 18-month period, the suspension will be for a period of not more than three months. When a licensee accumulates 24 points within a 36-month period, the suspension will be for a period of not more than one year.

The bill increases the number of points assessed for a conviction of exceeding the posted speed limit by 30 miles per hour or more from four points to six points. For purposes of speeding violations in excess of 30 miles per hour over the posted speed limit, the bill defines "conviction" as a finding of guilt, with or without adjudication of guilt, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere, notwithstanding that adjudication was withheld.

Traffic Control—Red Light Violations

According to the Federal Highway Administration (FHA), in 1999 there were 92,000 automobile crashes caused by running red lights in United States urban areas.[11] These accidents resulted in 90,000 injuries and 950 fatalities with estimated social costs, including property damage, injury, lost time and death, exceeding $7 billion. The FHA also has done surveys in which 55.8% of Americans admit to running red-lights and 99.6% of drivers fear being hit by another driver running a red light.

Section 322.27 (3), F.S., establishes a system of points that are assessed against a driver's license when a person is convicted of violating certain motor vehicle laws. It provides that for a violation of a traffic control signal device 4 points are assessed to the driver's license. The point system is used for the evaluation and determination of the continuing qualification of a person to operate a motor vehicle. The provisions of the point system detailed above are under the heading, Florida's Point System.

Under current law, it is possible that a red light runner could cause a crash seriously injuring someone and suffer no more than a $60 fine and a brief suspension of driving privileges. The bill amends s. 322.27, F.S., to assess 6 points on the driver's license for a conviction of a red light violation that results in a crash. This is the same number of points assessed for crashes resulting from speeding.

Failing to Secure Loads

Under current law, s. 316.520, F.S., a vehicle may not be driven or moved on any highway unless the vehicle is constructed or loaded to prevent its load from dropping, shifting, leaking, blowing, or escaping. Also, it is the duty of the owner and driver, of vehicles hauling dirt, sand, lime rock, gravel, silica, trash, garbage, inanimate objects, or material that could fall or be blown from the vehicle, to prevent such materials from escaping by covering and securing the load with a close-fitting tarpaulin, cover or a load securing device meeting the requirements of 49 C.F.R. s. 393.100 or a device designed to reasonably ensure that cargo will not shift, or fall from the vehicle.

Section 318.18, F.S., provides the following penalties for violations of s. 316.520(1) or (2), F.S., failing to secure loads:

- One hundred dollars for a violation of s. 316.520(1) or (2), F.S., relating to failing to secure loads on vehicles [covering and securing the load with a tarp, cover or other load securing device is considered compliance with this section; and
- For a second or subsequent adjudication within a period of 5 years, the DHSMV must suspend the driver's license of the person for not less than 180 days and not more than one year.

[11] Inadvertent Red Light Violations: An Economic Analysis, Craig A. Depken, II; Department of Economics; University of Texas at Arlington; Arlington, Texas 76019-0479.

The bill amends s. 318.18, F.S., providing for an increase in penalties for failing to secure loads on vehicles. The bill doubles the $100 fine making it $200 plus applicable fees and court costs and increases the driver's license suspension for a second offense from a minimum of 180 days and a maximum of one year to a minimum of one year and a maximum of two years. This change could decrease traffic accidents caused by unsecured loads on vehicles and deter violations for failing to secure loads on vehicles.

Police Vehicles—Title Branding

Section 319.14, F.S., prohibits the sale, or exchange of any vehicle that has been licensed, registered, or used as a taxicab, police vehicle, or short-term-lease vehicle, or a vehicle that has been repurchased by a manufacturer pursuant to a settlement, determination, or decision under chapter 681 relating to motor vehicle sales warranties or the "lemon law," until DHSMV has stamped in a conspicuous place on the certificate of title of the vehicle, or its duplicate, words stating the nature of the previous use of the vehicle or the title has been stamped "Manufacturer's Buy Back" to reflect that the vehicle is a nonconforming vehicle. According to some law enforcement agencies, branding the title of non-pursuit vehicles as police vehicles reduces the resale value of these vehicles.

The bill amends the definition of "police vehicles" in s. 319.14, F.S., to include the words "marked and outfitted as a pursuit vehicle" so that only pursuit vehicles would have to be issued a title branded as a police vehicle. According to some law enforcement agencies this provision would increase the resale value of non-pursuit vehicles owned by the law enforcement agency.

Operation Iraqi Freedom and Operation Enduring Freedom License Plates

Currently an owner or lessee of a private vehicle who is a resident of the state and an active or retired member of the Florida National Guard, a survivor of the attack on Pearl Harbor, a recipient of the Purple Heart medal, or an active or retired member of any branch of the United States Armed Forces Reserve, may apply to DHSMV and be issued either a "National Guard," "Pearl Harbor Survivor," "Combat-Wounded Veteran," or "U.S. Reserve" license plate.

The bill amends s. 320.089, F.S., to create Operation Iraqi Freedom and Operation Enduring Freedom license plates and qualifies Operation Iraqi Freedom and Operation Enduring Freedom veterans as the exclusive recipients of these plates. There would be no additional charge for the new license plate.

Motor Vehicle Dealers

Continuing Education & Training

Currently s. 320.27, F.S., requires all independent motor vehicle dealers to complete eight hours of continuing education prior to filing the renewal forms to DHSMV. The continuing education is to include at least two hours of legal or legislative issues, one hour of department issues, and five hours of relevant motor vehicle industry topics. The education may be provided in a classroom setting or by correspondence. This section also requires that for each initial license application, franchise motor vehicle dealers or an employee must attend an eight hour training and information seminar. The seminar includes, but is not limited to, dealer requirements, which include bookkeeping and recordkeeping procedures, requirements for the collection of sales and use taxes, and other information that will promote good business practices.

The bill would require only independent motor vehicle dealers who have been in business for less than five years to complete the continuing education listed in s. 320.27, F.S. This change would limit the continuing education course requirement to only those independent dealers who are relatively new to the business. The bill would also delete the current provision requiring franchise motor vehicle dealers to attend an eight hour training and information seminar for each initial license application.

Low Speed Vehicles

Currently, s. 320.27, F.S., relating to motor vehicle dealers, defines "motor vehicle" as any motor vehicle of the type and kind required to be registered and titled under chapters 319 and 327, except a recreational vehicle, moped, motorcycle powered by a motor with a displacement of 50 cubic centimeters or less, or mobile home.

The bill amends s. 320.27, F.S., by adding low speed vehicles to the list of vehicles excepted from the definition of "motor vehicles" for motor vehicle dealer licensing purposes. Low speed vehicles are defined in s. 320.01, F.S., as any four-wheeled electric vehicle complying with federal safety standards whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including neighborhood electric vehicles.

Sellers of low speed vehicles are required to be licensed as motor vehicle dealers. These same businesses are not required to be licensed to sell golf carts. Low speed vehicles and golf carts are similar in design. This change would eliminate the requirement that sellers of low speed vehicles be licensed as motor vehicle dealers.

Driver's Licenses and Identification Cards

Background: The REAL ID Act

The REAL ID Act of 2005, signed into law in May 2005, sets a May 2008 deadline for states to add detailed personal information to driver's licenses and identification (ID) cards to ensure that licensed drivers and persons issued ID cards are U.S. citizens or legal immigrants. Florida has begun the implementation of the Real ID Act to ensure that Florida's driver licenses and ID cards can be used for Federal identification purposes.

Currently the following provisions of the Real ID Act are being enforced in Florida:

- Requiring identity documents which evidences lawful presence;
- Obtaining minimum document requirements of full legal name, date of birth, and gender;
- Capturing and digitizing photographs and signatures;
- Obtaining the address of principle residence;
- Producing licenses and identification cards with three levels of security features – overt, covert, and forensic as well as the security of the equipment and materials;
- Utilizing common machine readable technology with defined minimum data elements;
- Obtaining proof of Social Security Number which is verified through the Social Security Administration;
- Verifying legal presence through the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE);
- Issuing temporary and limited tenure licenses and identification cards for non-citizens based on term of legal presence;
- Providing digital scanning and storing of identity source documents of non-United States citizens and the use of document authentication equipment;
- Providing fraudulent document training for field staff statewide;
- Subjecting all persons authorized to manufacture or procedure cards to appropriate security clearances. (Criminal back ground checks for employees and vendors);
- Maintaining a state motor vehicles database that contains all data fields printed on the drivers' licenses and identification cards; and their driving histories; and
- Limiting the period of validity of all driver's licenses and identification cards to a period not to exceed eight years.

The bill contains revisions to definitions and the application process for driver's licenses and ID cards in Chapter 322, Florida Statutes, to ensure compliance with all the provisions of the federal Real ID Act.

Driver's License Definitions

Currently s. 322.01, F.S., defines "driver's license" as a certificate which, subject to all other requirements of law, authorizes an individual to drive a motor vehicle. Currently this section of law does not provide definitions for identification cards or temporary driver licenses.

The bill amends s. 322.01, F.S., to revise the following definitions to comply with federal codes:

- "Driver's license" denotes an operator's license as defined in 49 U.S.C. s. 30301;
- "Identification card" means a personal identification card issued by the department and which conforms to the definition in 18 U.S.C. s. 1028 (D);
- "Temporary driver license" means a certificate issued by the department, subject to all other requirements of law, which authorizes an individual to drive a motor vehicle, and which denotes an operator's license as defined in 49 U.S.C. s. 30301, and which denotes that the holder is permitted to stay for a short duration of time specified in the document issued and is not a permanent resident of the United States, and
- "Temporary identification card" means a personal identification card issued by the department that conforms to the definition in 18 U.S.C. s. 1028(D), and denotes that the holder is not a permanent resident of the United States but is permitted to stay in the United States for a short duration of time specified on the card.

Application for Licenses

Currently, s. 322.08, F.S., requires the following information for proof of nonimmigrant classification provided by the Department of Homeland Security, for an original driver's license:

- A notice of hearing from an immigration court scheduling a hearing;
- A notice from the Board of Immigration Appeals acknowledging a pending appeal;
- A notice of the approval of an application for adjustment of status issued by the Immigration and Naturalization Service,
- Any official documentation confirming the filing of a petition for asylum status or other relief issued by the Immigration and Naturalization Service;
- A notice of action transferring any pending matter from another jurisdiction to this state issued by the Immigration and Naturalization Service; and
- An order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States.

The bill would allow the documentation of refugee status and evidence that an application is pending for adjustment of status to that of an alien or conditional permanent resident status in the United States to be used for proof of non-immigrant classification. To use such evidence a visa number must be available with a current priority date for processing by the Citizenship and Immigration Services.

Also under s. 322.08, F.S., the presentation of an employment authorization card, or proof of nonimmigrant classification, both provided by the Department of Homeland Security, for an original driver's license, entitles the applicant to a driver's license for a period not to exceed the expiration date of the document presented or two years, whichever occurs first. The bill would change the maximum period of entitlement for a driver's license from two years to one year if these documents are presented by the applicant.

ID Cards

Currently s. 322.051, F.S., relating to ID cards, provides that any person who is 12 years of age or older, or any person who has a disability, regardless of age, who applies for a disabled parking

permit[12], under Florida law can be issued an ID card by DHSMV upon completion of an application and payment of an application fee. The bill would amend s. 322.051, F.S., changing the minimum age requirement that ID cards may be issued from 12 years old to five years old.

Section 322.051, F.S., also requires the following documents to be presented in order to prove non-immigrant classification for purposes of obtaining an ID card:

- A notice of hearing from an immigration court scheduling;
- A notice from the Board of Immigration Appeals acknowledging a pending appeal;
- A notice of the approval of an application for adjustment of status issued by the Bureau of Citizenship and Immigration Services;
- Any official documentation confirming the filing of a petition for asylum status or any other relief issued by the Bureau of Citizenship and Immigration Services;
- A notice of action transferring any pending matter from another jurisdiction to Florida, issued by the Bureau of Citizenship and Immigration Services; and
- An order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States.

The bill would allow evidence that an application is pending for adjustment of status to that of an alien or conditional permanent resident status in the United States to be used for proof of non-immigrant classification. To use such evidence a visa number must be available with a current priority date for processing by the Citizenship and Immigration Services.

Also under s. 322.051, F.S., the presentation of an employment authorization card, or proof of nonimmigrant classification, both provided by the Department of Homeland Security, for an original identification card, entitles the applicant to an identification card for a period not to exceed the expiration date of the document presented or two years, whichever occurs first. The bill would change the maximum period of entitlement for driver's identification cards from two years to one year if these documents are presented by the applicant.

Driver License Digital Image and Record Sharing

The Help America Vote Act of 2002

On October 29, 2002, the U.S. Congress passed and the President signed the federal Help America Vote Act of 2002 ("HAVA"). It authorizes over $3 billion dollars in federal aid over three years to the states to upgrade antiquated voting equipment, to assist the states in meeting the new election administration requirements in the bill, and for other election administration projects. It also contains several new, highly-technical substantive requirements. The Florida Legislature has already enacted a number of reforms that go a long way toward meeting the new federal requirements. There are still some provisions of Florida law that need amending to meet HAVA's new, somewhat technical substantive requirements.

One requirement of HAVA is:

> Statewide Voter Registration System: By January 1, 2006 (pursuant to requested waiver of a 2004 deadline by the State of Florida), the State must make operational a statewide voter registration system that will serve as the official registration record for all federal elections; the system database must be cross-referenced against driver's license and social security administration records to confirm the identities of persons registering to vote.

HAVA Computerized Statewide Voter Registration List Requirements

[12] S. 320.0848, F.S.

The statewide voter registration list must be an interactive statewide list maintained and administered at the state level, containing the name and address of every voter, with a unique identifier having the following attributes:

- Serves as the single system for storing and managing the official list of voters;
- Must contain the name and registration information of every registered voter in the state;
- Must have a unique identifier assigned to each voter;
- Must coordinate with other agency databases;
- Any election official in the state must be able to obtain immediate electronic access to the information;
- Supervisors of elections must enter information in the database on a expedited basis;
- State must provide support to supervisors; and
- Serves as the official voter registration list for federal elections.

Section 322.142, F.S., relating to color photographic or digital imaged licenses, allows DHSMV to maintain a film negative or print file and requires the department to maintain a record of the digital image and signature of the licensees, with other data required by the department for identification and retrieval. Reproductions are only permitted for departmental administrative purposes or for the issuance of duplicate licenses, in response to law enforcement agency requests or to certain state agencies (including the Department of State) pursuant to interagency agreements.

This change would allow DHSMV to share driver license digital images and records with Supervisors of Elections for determining voter eligibility. Current law allows this information to be shared with the Department of State for determining voter eligibility, but not with the Supervisors of Elections.

Suspension of License and Right to Review

Background: Driving Under the Influence (DUI)

Currently, when an individual is arrested for a violation of s. 316.193, F.S., and has an unlawful blood or breath level of .08 or higher or refuses to submit to a breath, blood or urine test when requested by a law enforcement officer, the individual's driving privilege is suspended at the time of arrest. The bill revises various provisions to Chapter 322, to provide clarification and consistency between driver license administrative suspension laws, ss. 322.2615 and 322.2616, and also addresses issues raised by courts in cases involving DHSMV's implementation of these sections.

Lawful Arrest

According to a recent Florida case[13], Section 322.2615, F.S., provides that during a formal administrative review of a driver license suspension, the hearing officer must determine whether the person was placed under lawful arrest for a violation of s. 316.193, F.S., if the validity of the traffic stop is challenged. The court's opinion stated, "This provision contemplates that issues relating to the lawfulness of the stop... will be resolved under the issue concerning the lawfulness of the arrest."[14]

Driver License Suspension—Procedures & Reviews

The bill makes the following changes to s. 322.2615, F.S. to negate the need for DHSMV to show during the administrative review of a driver license suspension that a lawful arrest for a violation of s. 316.193, F.S. occurred in order to suspend the driver's license. The bill:

- Clarifies the following grounds for a suspension of driving privileges by a law enforcement or correctional officer:
    - Driving or in actual physical control of a motor vehicle with an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher,

[13] See Adam Schwartz v. State of Florida, Department of Highway Safety and Motor Vehicles, 920 So.2d 664 (Fla 3rd DCA 2005)
[14] *ID.*

- Refusing to submit to a urine test, or a test of his or her breath-alcohol or blood-alcohol level;

- Provides that if a blood test has been administered and the results are not available at the time of arrest, the officer, or the agency employing the officer, is required to transmit the results to DHSMV within 5 days after receipt of the results.
- Requires the law enforcement officer to forward to DHSMV, within 5 days after issuing the notice of suspension of the driver's license, an affidavit stating the officer's grounds for belief that the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages, or chemical or controlled substances;
- Clarifies the language relating to informal review by changing the word arrested to suspended;
- Clarifies the authority of hearing officer when suspension is under formal review, specifying that the hearing officer may subpoena and question officers and witnesses;
- Clarifies the issues within the scope of review for formal review hearings, specifying the blood and breath alcohol level for suspension, and removing the reference to arrest under s. 316.193, F.S.;
- Provides that materials submitted to DHSMV by law enforcement or correctional agencies are self-authenticating and are part of the record to be considered by the hearing officer;
- Requires the crash report to be considered by the hearing officer notwithstanding the prohibition of s. 316.066(4), F.S., against the use of crash reports in civil or criminal trials;
- Clarifies the language related to DHSMV procedures that follow the hearing officer's determination, specifying that the suspension period commences on the date of issuance of notice of suspension rather than the date of arrest;
- Allows a law enforcement agency to appeal any decision of DHSMV that invalidates the suspension by a petition for writ of certiori to the circuit court; and
- Provides that DHSMV's decision, and any circuit court review of that decision, may not be considered in any DUI trial for a violation of s. 316.193, F.S.

Technical Changes

Reexamination of Drivers

The bill makes technical changes to s. 322.121, F.S., related to the periodic reexamination of drivers. This change would correct the cross references to paragraphs (a) through (f) of s. 322.57(1).

Motor Vehicle Dealers

The bill makes technical changes to s. 320.27(9) (b)18. F.S., of the motor vehicle dealer law to change the word 'owned' to 'owed ' and to correct a cross reference to s. 320.02(17).

Gross Vehicle Weight

The bill makes technical changes to s. 316.302, F.S., related to commercial motor vehicle's safety regulations. This change would correct a reference to declared gross vehicle weight of less than 26,000 pounds to declared gross vehicle weight of less than 26,001 pounds.

Effective Date

Except as specifically provided in various sections of the bill, the bill takes effect on October 1, 2006.

C. SECTION DIRECTORY:

Section 1 amends s. 207.008, F.S., to revise the requirements for retention of records by motor carriers as required by DHSMV;

Section 2 amends s. 207.021, F.S., to provide for informal conferences to DHSMV to resolve disputes arising from the assessment of taxes, penalties, or interest;

Section 3 amends s. 316.003, F.S., to exclude miniature motorcycles from the definition of motorcycle; to provide a definition of "motorized scooter"; to define the term "miniature motorcycle"; and to conform current definitions of "saddle mount" to federal definitions;

Section 4 amends s. 316.211, F.S., effective January 1, 2007, to require motorcycle riders under 21 years old to display a license plate unique in design and color;

Section 5 creates s. 316.2123, F.S., to allow "ATV's" to be operated by licensed drivers during the daytime on unpaved roads where the posted speed limit is less than 35 miles per hour; requiring proof of ownership by the operator;

Section 6 creates s. 316.2128, F.S., to prohibit the operation of "motorized scooters" and "miniature motorcycles" on public roads and sidewalks; to require the operator to have proof of ownership in possession at all times; to require a person selling "motorized scooters" and "miniature motorcycles" to provide a notice that these vehicles are not legal to operate on public roads or sidewalks; and to provide penalties for violations;

Section 7 amends s. 316.221, F.S., to provide a taillamp exemption for dump trucks;

Section 8 amends s. 316.302, F.S., to provide updates to federal regulations regarding commercial motor vehicle rules and regulations; to bring the intrastate hours-of-service requirements into compliance with federal tolerance allowances; to conform state utility and agricultural transportation law with federal law; and to revise the requirements for a CDL vision exemption;

Section 9 amends s. 316.515, F.S., to allow the operation of certain forestry equipment on public roads; and to conform current definitions of "automobile towaway and driveaway operations" and "saddle mount" to federal definitions;

Section 10 amends s. 318.1215, F.S., the Dori Slosberg Driver Education Safety Act, to provide an increase in the amount of money the clerk of the court may collect for with each traffic penalty from $3 to $5;

Section 11 amends s. 318.14, F.S., to exclude drivers exceeding the speed posted speed limit by 30 miles per hour or more from paying a fine and attending traffic school in lieu of a court appearance;

Section 12 amends s. 318.18, F.S., to provide for a second offense in a twelve month period of exceeding the posted speed limit by 30 miles per hour or more an increase in fines from $250 to $500; and to increase the penalties for failing to secure loads;

Section 13 amends s. 318.19, F.S., to require a mandatory hearing for drivers exceeding the speed posted speed limit by 30 miles per hour or more;

Section 14 amends s. 319.14, F.S., to revise the definition of police vehicle for the purpose of title branding;

Section 15 amends s. 320.02, F.S., effective January 1, 2007, to require that for an original registration of any motorcycle, motor-driven cycle, or moped, the owner is to present proof that he or she has obtained the necessary endorsement as required in s. 322.57, F.S.;

Section 16 amends s. 320.0706, F.S., to revise the display of license plates on dump trucks;

Section 17 amends s. 320.089, F.S to create the "Operation Iraqi Freedom" and the "Operation Enduring Freedom" license plates;

Section 18 amends s. 320.27, F.S., to provide that sellers of low speed vehicles do not have to be licensed as motor vehicle dealers; to revise the motor vehicle dealer licensing requirements for continuing education and for training and information seminar; to change the word owned to owed; to correct a cross reference to s. 320.02(17), F.S.

Section 19 amends s. 320.405, F.S., to provide that DHSMV is authorized to enter into agreements related to the International Registration Plan tax payments;

Section 20 amends s. 322.01, F.S., to revise the definition of "driver license"; to define "identification card", "temporary driver license", and "temporary identification card";

Section 21 amends s. 322.051, F.S., to revise the age requirements for the issuance of ID cards from 12 years old to five; to revise the criteria related to the proof of nonimmigrant classification of an applicant for an identification card; and to reduce the maximum period that certain ID cards are valid to one year;

Section 22 amends s. 322.08, F.S., to revise the criteria related to the proof of nonimmigrant classification of an applicant for a driver's license; and to reduce the maximum period that drivers licenses are valid to 1 year;

Section 23 amends s. 322.12, F.S., effective January 1, 2008, to revise the safety course requirements for first-time applicants for licensure to operate a motorcycle;

Section 24 amends s. 322.121, F.S., to clarify periodic license examination requirements;

Section 25 amends s. 322.142, F.S., to allow DHSMV to share driver license digital images and records with Supervisors of Elections for determining voter eligibility;

Section 26 amends s. 322.2615, F.S., to clarify procedures, language and content related to suspension of license and right to review for driving with unlawful breath alcohol or blood-alcohol levels;

Section 27 amends s. 322.27, F.S., to increase driver license points from four to six for exceeding the posted speed limit by 30 miles per hour or more; to increase driver license points for a red light violation resulting in a crash to six points;

Section 28 provides that this bill takes effect October 1, 2006, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS section, below

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS section, below

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS section, below

D. FISCAL COMMENTS:

Traffic Control Violations

Sections 11, 12, 13, and 27 amend ss. 318.14, 318.18, 318.19, and 322.27, F.S., to increase driver license points for exceeding the posted speed limit, requires mandatory hearings, doubles the fine for a second offense for exceeding the posted speed limit by 30 miles per hour or more. The bill also increases the driver's license points for a red light violation resulting in a crash and increases the penalty for failing to secure loads. These provisions could have an indeterminate fiscal impact on the private sector and on state and local governments if violations are committed and citations are issued.

To the extent that the bill deters unsafe traffic activity in Florida, crash-related injuries and deaths could be reduced thereby decreasing associated medical and insurance costs.

State Impacts

Motor Carrier Compliance

Section 8 amends s. 316.302, F.S., relating to intrastate hours-of-service requirements. Florida currently receives 50% ($3.3 million) of its allocated federal funding ($6.6 million) through the federal Motor Carrier Safety Assistance Program (MCSAP). The provisions of the bill relating to commercial motor vehicles would allow Florida to receive full federal allocation of $6.6 million for the MCSAP. Failure to bring intrastate requirements within the federal tolerance guidelines could jeopardize additional federal highway funding.

Police Vehicles

Section 14 amends s. 319.14, F.S., related to title branding. This change could have a positive fiscal impact on state law enforcement agencies by increasing the resale value of non-pursuit vehicles owned by law enforcement agencies.

Local Impacts

The Dori Slosberg Driver Education Safety Surcharge

Section 10 amends s. 318.1215, F.S., to provide an increase in the amount of money the clerk of the court may collect for with each traffic penalty from $3 to $5. To the extent that local governments choose to increase their surcharge, this provision would have an indeterminate positive impact on the driver education programs in public and nonpublic schools that are funded from this surcharge.

Police Vehicles

Section 14 amends s. 319.14, F.S., related to title branding. This change could have a positive fiscal impact on local law enforcement agencies by increasing the resale value of non-pursuit vehicles owned by law enforcement agencies.

Private Sector Impacts

Pocket Motorcycles and Motorized Scooters

Section 6 creates s. 316.2128, F.S., requiring a person selling "motorized scooters" and "miniature motorcycles" to display a notice that these vehicles are not legal to operate on roads or sidewalks. This notice and a copy of the statute must be provided to the consumer prior to purchase. Violations of the sales disclosure provision are punishable under the "Florida Deceptive and Unfair Trade Practices Act"[15] and are liable for a civil penalty of not more than $10,000 for each violation plus applicable court costs and attorney fees. This change could have an indeterminate negative fiscal impact on the sellers of these vehicles for complying with display and disclosure requirements, or if these requirements are violated.

Motor Carrier Compliance

Section 8 amends s. 316.302, F.S., relating to intrastate hours-of-service requirements. Due to hour-of-service changes the bill could have a negative fiscal impact on the commercial motor carrier industry. The amount of the operational costs associated with these changes are unknown.

Forestry Equipment

Section 9 amends s. 316.515, F.S., to allow certain forestry equipment to operate on public roads to go from one point of harvest to another. This change could have an indeterminate positive fiscal impact on the owners of the equipment being transported.

Low Speed Vehicles

Section 18 amends s. 320.27, F.S., to eliminate the requirement for sellers of low speed vehicles to be licensed as motor vehicle dealers. This change could have an indeterminate positive fiscal impact on businesses that sell low speed vehicles.

Independent Motor Vehicle Dealers

Section 18 amends s. 320.27, F.S., to require only independent motor vehicle dealers who have been in business for less than five years to complete the continuing education courses, limiting the continuing education course requirement to only those independent dealers who are relatively new to the business. This could have an indeterminate positive fiscal impact on the independent dealers who have been in business five years or more and an indeterminate positive fiscal impact on the providers of the continuing education courses.

Franchise Motor Vehicle Dealers

Section 18 amends s. 320.27, F.S., to delete the current provision requiring new franchise motor vehicle dealers to attend an eight hour training and information seminar for each initial license application. This could have an indeterminate positive fiscal impact on these franchise motor vehicle dealers and an indeterminate negative fiscal impact on the training and information seminar providers.

Motorcycle Riders

Section 23 amends s. 322.12, F.S., effective July 1, 2008 to require all applicants for a motorcycle driver's license endorsement, regardless of age, to successfully complete a motorcycle safety course. These courses are offered by different vendors throughout the state. The course registration fees vary

[15] S. 501.201, F.S.

and will result in an indeterminate negative fiscal impact on motorcycle drivers over 21 and an indeterminate positive fiscal impact for the course providers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

DHSMV has sufficient rule-making authority to carry out the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On **February 7, 2006** the Committee on Transportation considered PCB TR 06-03 and adopted 11 amendments which added the following issues to the proposed bill.

- Amendment #1: Increased driver license points, requires a mandatory hearing, and doubles the fine for a second offense for exceeding the posted speed limit by 30 miles per hour or more;

- Amendment #2: Increased the points for a red light violation resulting in a crash to six points (same as speeding resulting in a crash);

- Amendment #3: Increased the penalty for failing to secure loads from $100 to $200. Increases the driver's license suspension for a second offense from a minimum of 180 days and a maximum of one year to a minimum of one year and a maximum of two years;

- Amendment #5 Clarified the prohibition of the operation of "Pocket Motorcycles" and "Motorized Scooters" on public roads and sidewalks; required the operator to have proof of ownership; and sets out sales disclosure requirements;

- Amendment #6 Clarified the provisions on the bill relating to operating forestry equipment on public roads so that such movements are restricted to a maximum of 10 miles; and provided that such vehicles must comply with slow moving vehicle emblem requirements;

- Amendment #7: Allowed DHSMV to share driver license digital images and records with Supervisors of Elections for determining voter eligibility. Current law allows this information to be provided to the Department of State for this purpose, but does not refer to Supervisors;

- Amendment #8: Relating to Motor Carrier Compliance this amendment did the following:
  - Brings the intrastate hours-of-service requirements into compliance with federal tolerance allowances;

- Conforms state law to changes recently enacted into federal law for utilities and agricultural transportation;
- Conforms the current definitions of "automobile towaway and driveaway operations" and "saddle mount" to federal definitions;
- Updates the statutory reference to current Federal Motor Carrier Regulations; and
- Makes a technical change to weight threshold requirements by changing "26,000" pounds to "26,001" pounds;

- Amendment #9: Removed the requirement for a franchise motor vehicle dealer to attend an 8 hour training and information seminar for each initial license application;

- Amendment #10: Changed the effective date of the requirement that all first time applicants for licensure to operate a motorcycle complete a motorcycle safety course to July 1, 2008;

- Amendment #11: Increased the amount of money the clerk of the court may collect with each traffic penalty from $3 to $5.

The bill was then reported favorably as amended. The legislation was filed and became HB 7079.

A bill to be entitled

An act relating to highway safety and motor vehicles; amending s. 207.008, F.S.; revising requirements for motor carriers to retain certain records as required by the Department of Highway Safety and Motor Vehicles for tax purposes; amending s. 207.021, F.S.; authorizing the department to adopt rules establishing informal conferences to resolve disputes with motor carriers arising from the assessment of taxes, penalties, or interest or the denial of refunds; specifying certain rights of the motor carrier; providing for closing agreements to settle or compromise the taxpayer's liability; providing conditions for settlement or compromise; authorizing installment payment to settle liability; amending s. 316.003, F.S.; revising the definitions of "motor vehicle," "motorcycle," and "motorized scooter"; defining "miniature motorcycle" and "full mount"; revising the definition of "saddle mount" to provide for a full mount; amending s. 316.211, F.S.; requiring motorcycles registered to certain persons to display a license plate that is unique in design and color; providing penalties; creating s. 316.2123, F.S.; providing for all-terrain vehicle operation under certain conditions; requiring the operator to provide proof of ownership to a law enforcement officer; creating s. 316.2128, F.S.; prohibiting use of motorized scooters and miniature motorcycles on public roads and sidewalks; requiring the operator to possess proof of ownership;

prohibiting causing or allowing a child or ward to operate a motorized scooter or miniature motorcycle on public roads or sidewalks or without proof of ownership; providing penalties; providing requirements for commercial sale of motorized scooters and miniature motorcycles; providing that a violation of the commercial sales requirements is an unfair and deceptive trade practice; amending s. 316.221, F.S.; providing an exemption from certain taillamp requirements for dump trucks and vehicles with dump bodies; amending s. 316.302, F.S.; updating reference to federal commercial motor vehicle regulations; revising hours-of-service requirements for certain intrastate motor carriers; revising conditions for an exemption from commercial driver license requirements; revising weight requirements for application of certain exceptions to specified federal regulations and to operation of certain commercial motor vehicles by persons of a certain age; amending s. 316.515, F.S.; authorizing certain uses of forestry equipment; providing width and speed limitations; requiring such vehicles to be operated in accordance with specified safety requirements; revising length and mount requirements for automobile towaway and driveaway operations; authorizing saddle mount combinations to include one full mount; amending s. 318.1215, F.S.; increasing the amount of a local option surcharge on traffic penalties; amending s. 318.14, F.S.; providing exceptions to procedures for certain speed limit violations; removing the option for certain offenders to

attend driver improvement school; amending s. 318.18, F.S.; providing increased penalties for certain speed limit violations and violations of vehicle load requirements; defining "conviction" for specified purposes; amending s. 318.19, F.S.; requiring mandatory hearings for certain speed limit violations; amending s. 319.14, F.S.; revising definition of "police vehicle" for purpose of resale or exchange; amending s. 320.02, F.S.; requiring proof of required endorsement on a driver license as a condition for original registration of a motorcycle, motor-driven cycle, or moped; amending s. 320.0706, F.S.; revising license display requirements for dump trucks; amending s. 320.089, F.S.; providing for Operation Iraqi Freedom and Operation Enduring Freedom license plates for qualified military personnel; amending s. 320.27, F.S.; revising motor vehicle dealer licensing requirements; revising the definition of "motor vehicle" to provide an exception for certain low-speed vehicles; revising conditions for license renewal for certain independent dealers; removing certain training provisions; correcting terminology; correcting a cross-reference; amending s. 320.405, F.S.; authorizing the department to enter into certain agreements to schedule payments to settle certain liabilities under the International Registration Plan; amending s. 322.01, F.S.; revising the definition of "driver's license"; defining "identification card," "temporary driver's license," and "temporary identification card"; amending s. 322.051, F.S.; revising

the age requirement for issuance of an identification card; revising criteria for proof of the identity and status of an applicant for an identification card; revising the period of issuance for certain temporary identification cards; amending s. 322.08, F.S.; revising criteria for proof of the identity and status of an applicant for a driver license; revising the period of issuance for certain temporary driver licenses or permits; amending s. 322.12, F.S.; requiring all first-time applicants for licensure to operate a motorcycle to provide proof of completion of a motorcycle safety course; amending s. 322.121, F.S.; revising periodic license examination requirements; providing for such testing of applicants for renewal of a license under provisions requiring an endorsement permitting the applicant to operate a tank vehicle transporting hazardous materials; amending s. 322.142, F.S.; providing authority for driver license digital images and signatures to be reproduced and provided to supervisors of elections for certain purposes; amending s. 322.2615, F.S.; revising provisions for suspension of driver licenses and review of suspension by the department; revising criteria for notice of the suspension; providing that certain materials shall be considered self-authenticating and available to a hearing officer; revising authority of the hearing officer to subpoena and question witnesses; removing provision for the department and the person arrested to subpoena witnesses; providing for appeal by a law enforcement

agency of a department decision invalidating a suspension; providing that the court review may not be used in a trial for driving under the influence; amending s. 322.27, F.S.; providing for an increase in driver license points assessed for certain speed limit violations and for traffic control signal device violations resulting in a crash; defining "conviction" for specified purposes; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 207.008, Florida Statutes, is amended to read:

207.008 Retention of records by motor carrier.--Each registered motor carrier shall maintain and keep pertinent records and papers as may be required by the department for the reasonable administration of this chapter and shall preserve the records upon which each quarterly tax return is based for 4 years after the due date or filing date of the return, whichever is later ~~such records as long as required by s. 213.35~~.

Section 2. Section 207.021, Florida Statutes, is amended to read:

207.021 Informal conferences; settlement or compromise of taxes, penalties, or interest.--~~The department may settle or compromise, pursuant to s. 213.21, penalties or interest imposed under this chapter.~~

(1)(a) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 for establishing informal conferences to

resolve disputes arising from the assessment of taxes, penalties, or interest or the denial of refunds.

(b) During any proceeding arising under this section, the motor carrier has the right to be represented at and record all proceedings at the motor carrier's expense.

(2)(a) The executive director of the department or his or her designee is authorized to enter into closing agreements with any taxpayer settling or compromising the taxpayer's liability for any tax, interest, or penalty assessed under this chapter. The agreement shall be in writing and must be in the form of a closing agreement approved by the department and signed by the executive director or his or her designee. The agreement shall be final and conclusive except upon a showing of material fraud or misrepresentation of material fact. No additional assessment may be made by the department against the taxpayer for the tax, interest, or penalty specified in the closing agreement for the time specified in the closing agreement, and the taxpayer shall not be entitled to institute any judicial or administrative proceeding to recover any tax, interest, or penalty paid pursuant to the closing agreement. The executive director or his or her designee is authorized to approve any such closing agreement.

(b) Notwithstanding the provisions of paragraph (a), for the purpose of settling and compromising the liability of any taxpayer for tax or interest on the grounds of doubt as to liability based on the taxpayer's reasonable reliance on a written determination issued by the department, the department may compromise the amount of such tax or interest resulting from

such reasonable reliance.

(3) A taxpayer's liability for any tax or interest specified in this chapter may be compromised by the department upon the grounds of doubt as to liability for or the ability to collect such tax or interest. Doubt as to the liability of a taxpayer for tax and interest exists if the taxpayer demonstrates that he or she reasonably relied on a written determination of the department.

(4) A taxpayer's liability for any tax or interest under this chapter shall be settled or compromised in whole or in part whenever or to the extent allowable under the International Fuel Tax Agreement Articles of Agreement.

(5) A taxpayer's liability for penalties under this chapter may be settled or compromised if it is determined by the department that the noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud.

(6) The department is authorized to enter into agreements for scheduling payments of taxes, penalties, and interest due to the department as a result of audit assessments issued under this chapter.

Section 3. Subsections (21), (22), (43), and (82) of section 316.003, Florida Statutes, are amended, and subsection (86) is added to that section, to read:

316.003 Definitions.--The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(21) MOTOR VEHICLE.--Any self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, ~~motorized scooter,~~ electric personal assistive mobility device, or moped.

(22) MOTORCYCLE.--Any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor, a miniature motorcycle, or a moped.

(43) SADDLE MOUNT; FULL MOUNT.--An arrangement whereby the front wheels of one vehicle rest in a secured position upon another vehicle. All of the wheels of the towing vehicle are upon the ground and only the rear wheels of the towed vehicle rest upon the ground. Such combinations may include one full mount, whereby a smaller transport vehicle is placed completely on the last towed vehicle.

(82) MOTORIZED SCOOTER.--Any vehicle not having a seat or saddle for the use of the rider, designed to travel on not more than three wheels, and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground and that, because of its small size, its design or lack of required safety equipment, or other noncompliance with federal regulations, is not eligible for a manufacturer's certificate of origin and for registration pursuant to chapter 320.

(86) MINIATURE MOTORCYCLE.--Any vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground and that, because of its small size, its design or lack of required safety equipment, or other noncompliance with federal regulations, is

not eligible for a manufacturer's certificate of origin and for registration as a motorcycle pursuant to chapter 320. The term does not include off-highway vehicles as defined in chapter 317.

Section 4. Effective January 1, 2007, subsection (6) of section 316.211, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to that section, to read:

316.211 Equipment for motorcycle and moped riders.--

(6) Motorcycles registered to persons who have not attained 21 years of age shall display a license plate that is unique in design and color.

(7) ~~(6)~~ A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

Section 5. Section 316.2123, Florida Statutes, is created to read:

316.2123 Operation of an ATV on certain roadways.--The operation of an ATV as defined in s. 317.0003 upon the public roads or streets of this state is prohibited, except that an ATV may be operated during the daytime on an unpaved roadway where the posted speed limit is less than 35 miles per hour by a licensed driver or by a minor under the supervision of a licensed driver. The operator must provide proof of ownership pursuant to chapter 317 upon request by a law enforcement officer.

Section 6. Section 316.2128, Florida Statutes, is created to read:

316.2128 Operation of motorized scooters and miniature motorcycles; requirements for sales.--

(1) The operation of motorized scooters and miniature motorcycles, as defined in s. 316.003, on the public roads or streets of this state or on the sidewalks of this state is prohibited, and such vehicles may not be registered pursuant to chapter 320. Except when operating the vehicle on the operator's own private property, the operator of such a vehicle must keep proof of ownership in the form of a receipt, sales invoice, bill of sale, or other written documentation in his or her possession at all times.

(2)(a) No person shall cause or knowingly permit his or her child or ward who has not attained 16 years of age to drive a motorized scooter or miniature motorcycle in violation of subsection (1).

(b) No person shall cause or knowingly permit his or her child or ward who is between 16 to 18 years of age and who is not a licensed driver to drive a motorized scooter or miniature motorcycle in violation of subsection (1).

(3) A violation of subsection (1) or subsection (2) is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318. A minor in violation of any provision of this section is also subject to the additional sanctions of s. 318.143.

(4) A person who engages in the business of, serves in the capacity of, or acts as a commercial seller of motorized scooters or miniature motorcycles in this state must comply with this subsection. Each such person shall prominently display at his or her place of business a notice that such vehicles are not legal to operate on public roads or sidewalks and may not be

registered as motor vehicles. The required notice must also appear in all forms of advertising offering motorized scooters or miniature motorcycles for sale. The notice and a copy of this section must also be provided to a consumer prior to the consumer's purchasing or becoming obligated to purchase a motorized scooter or a miniature motorcycle. Any person selling or offering a motorized scooter or a miniature motorcycle for sale in violation of this subsection commits an unfair and deceptive trade practice as defined in part II of chapter 501.

Section 7. Subsection (2) of section 316.221, Florida Statutes, is amended to read:

316.221 Taillamps.--

(2) Either a taillamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillamp or taillamps, together with any separate lamp or lamps for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted. Dump trucks and vehicles with dump bodies are exempt from the requirements of this subsection.

Section 8. Paragraph (b) of subsection (1), paragraphs (b), (c), (d), (f), and (i) of subsection (2), and subsection (3) of section 316.302, Florida Statutes, are amended to read:

316.302 Commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.--

(1)

(b) Except as otherwise provided in this section, all owners or drivers of commercial motor vehicles that are engaged in intrastate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 385, and 390-397, with the exception of 49 C.F.R. s. 390.5 as it relates to the definition of bus, as such rules and regulations existed on October 1, 2005 ~~2004~~.

(2)

(b) Except as provided in 49 C.F.R. s. 395.1(k), a person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 may not drive:

1. More than 12 hours following 10 consecutive hours off duty; or

2. For any period after the end of the 16th hour after coming on duty following 10 consecutive hours off duty ~~is exempt from 49 C.F.R. s. 395.3(a) and (b) and may, after 8 hours' rest, and following the required initial motor vehicle inspection, be permitted to drive any part of the first 15 on-duty hours in any 24-hour period, but may not be permitted to operate a commercial motor vehicle after that until the requirement of another 8 hours' rest has been fulfilled~~.

The provisions of this paragraph do not apply to drivers of utility service vehicles as defined in 49 C.F.R. s. 395.2 ~~public utility vehicles or authorized emergency vehicles during periods of severe weather or other emergencies~~.

(c) Except as provided in 49 C.F.R. s. 395.1(k), a person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 may not drive after having been on duty more than 70 hours in any period of 7 consecutive days or more than 80 hours in any period of 8 consecutive days if the motor carrier operates every day of the week. Twenty-four ~~be on duty more than 72 hours in any period of 7 consecutive days, but carriers operating every day in a week may permit drivers to remain on duty for a total of not more than 84 hours in any period of 8 consecutive days; however, 24~~ consecutive hours off duty shall constitute the end of any such period of 7 or 8 consecutive days. This weekly limit does not apply to a person who operates a commercial motor vehicle solely within this state while transporting, during harvest periods, any unprocessed agricultural products or unprocessed food or fiber that is ~~are~~ subject to seasonal harvesting from place of harvest to the first place of processing or storage or from place of harvest directly to market or while transporting livestock, livestock feed, or farm supplies directly related to growing or harvesting agricultural products. Upon request of the Department of Transportation, motor carriers shall furnish time records or other written verification to that department so that the Department of Transportation can determine compliance with this subsection. These time records must be furnished to the Department of Transportation within 10 days after receipt of that department's request. Falsification of such information is subject to a civil penalty not to exceed $100. The provisions of

this paragraph do not apply to drivers of ~~public~~ utility service vehicles as defined in 49 C.F.R. s. 395.2 ~~or authorized emergency vehicles during periods of severe weather or other emergencies~~.

(d) A person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 within a 150 ~~200~~ air-mile radius of the location where the vehicle is based need not comply with 49 C.F.R. s. 395.8, except that time records shall be maintained as prescribed in 49 C.F.R. s. 395.1(e)(5).

(f) A person who operates a commercial motor vehicle having a declared gross vehicle weight of less than 26,001 ~~26,000~~ pounds solely in intrastate commerce and who is not transporting hazardous materials in amounts that require placarding pursuant to 49 C.F.R. part 172, or who is transporting petroleum products as defined in s. 376.301, is exempt from subsection (1). However, such person must comply with 49 C.F.R. parts 382, 392, and 393, and with 49 C.F.R. ss. 396.3(a)(1) and 396.9.

(i) A person ~~who was a regularly employed driver of a commercial motor vehicle on July 4, 1987, and~~ whose driving record shows no traffic convictions, pursuant to s. 322.61, during the 2-year period immediately preceding the application for the commercial driver's license, ~~and~~ who is otherwise qualified as a driver under 49 C.F.R. part 391, and who operates a commercial vehicle in intrastate commerce only~~,~~ shall be exempt from the requirements of 49 C.F.R. part 391, subpart E,

s. 391.41(b)(10). However, such operators are still subject to the requirements of ss. 322.12 and 322.121. As proof of eligibility, such driver shall have in his or her possession a physical examination form dated within the past 24 months.

(3) A person who has not attained ~~under the age of~~ 18 years of age may not operate a commercial motor vehicle, except that a person who has not attained ~~under the age of~~ 18 years of age may operate a commercial motor vehicle which has a gross vehicle weight of less than 26,001 ~~26,000~~ pounds while transporting agricultural products, including horticultural or forestry products, from farm or harvest place to storage or market.

Section 9. Subsections (5) and (10) of section 316.515, Florida Statutes, are amended to read:

316.515 Maximum width, height, length.--

(5) IMPLEMENTS OF HUSBANDRY, AGRICULTURAL TRAILERS, FORESTRY EQUIPMENT; SAFETY REQUIREMENTS.--

(a) Notwithstanding any other provisions of law, straight trucks, agricultural tractors, and cotton module movers, not exceeding 50 feet in length, or any combination of up to and including three implements of husbandry including the towing power unit, and any single agricultural trailer with a load thereon or any agricultural implements attached to a towing power unit not exceeding 130 inches in width, or a self-propelled agricultural implement or an agricultural tractor not exceeding 130 inches in width, is authorized for the purpose of transporting peanuts, grains, soybeans, cotton, hay, straw, or other perishable farm products from their point of production to

the first point of change of custody or of long-term storage, and for the purpose of returning to such point of production, or for the purpose of moving such tractors, movers, and implements from one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler, if such vehicle or combination of vehicles otherwise complies with this section. Such vehicles shall be operated in accordance with all safety requirements prescribed by law and Department of Transportation rules. The Department of Transportation may issue overlength permits for cotton module movers greater than 50 feet but not more than 55 feet in overall length.

(b) Notwithstanding any other provisions of law, equipment not exceeding 136 inches in width and not capable of speeds exceeding 20 miles per hour that is used exclusively for the purpose of harvesting forestry products is authorized for the purpose of transporting the equipment from one point of harvest to another point of harvest, not to exceed 10 miles, by a person engaged in the harvesting of forestry products. Such vehicles shall be operated in accordance with all safety requirements prescribed by s. 316.2295(5) and (6).

(10) AUTOMOBILE TOWAWAY AND DRIVEAWAY OPERATIONS.--An automobile towaway or driveaway operation transporting new or used trucks may use what is known to the trade as "saddle mounts," if the overall length does not exceed 97 ~~75~~ feet and no more than three saddle mounts are towed. Such combinations may include one full mount. Saddle mount combinations must also

comply with the applicable safety regulations in 49 C.F.R. s. 393.71.

Section 10. Section 318.1215, Florida Statutes, is amended to read:

318.1215 Dori Slosberg Driver Education Safety Act.--~~Effective October 1, 2002,~~ Notwithstanding the provisions of s. 318.121, a board of county commissioners may require, by ordinance, that the clerk of the court collect an additional $5 ~~$3~~ with each civil traffic penalty, which shall be used to fund driver education programs in public and nonpublic schools. The ordinance shall provide for the board of county commissioners to administer the funds, which shall be used for enhancement, and not replacement, of driver education program funds. The funds shall be used for direct educational expenses and shall not be used for administration. Each driver education program receiving funds pursuant to this section shall require that a minimum of 30 percent of a student's time in the program be behind-the-wheel training. This section may be cited as the "Dori Slosberg Driver Education Safety Act."

Section 11. Subsection (9) of section 318.14, Florida Statutes, is amended to read:

318.14 Noncriminal traffic infractions; exception; procedures.--

(9) Any person who does not hold a commercial driver's license and who is cited for an infraction under this section other than a violation of s. 316.183(2), s. 316.187, or s. 316.189, when the driver exceeds the posted limit by 30 miles per hour or more, or s. 320.0605, s. 320.07(3)(a) or (b), s.

322.065, s. 322.15(1), s. 322.61, or s. 322.62 may, in lieu of a court appearance, elect to attend in the location of his or her choice within this state a basic driver improvement course approved by the Department of Highway Safety and Motor Vehicles. In such a case, adjudication must be withheld; points, as provided by s. 322.27, may not be assessed; and the civil penalty that is imposed by s. 318.18(3) must be reduced by 18 percent; however, a person may not make an election under this subsection if the person has made an election under this subsection in the preceding 12 months. A person may make no more than five elections under this subsection. The requirement for community service under s. 318.18(8) is not waived by a plea of nolo contendere or by the withholding of adjudication of guilt by a court.

Section 12. Paragraph (g) is added to subsection (3) of section 318.18, Florida Statutes, and subsection (12) of that section is amended, to read:

318.18 Amount of civil penalties.--The penalties required for a noncriminal disposition pursuant to s. 318.14 are as follows:

(3)

(g) A person cited for a second or subsequent violation of exceeding the speed limit by 30 miles per hour and above within a 12-month period shall pay a fine double the amount listed in paragraph (b). For purposes of this paragraph, the term "conviction" means a finding of guilt, with or without adjudication of guilt, as a result of a jury verdict, nonjury

trial, or entry of a plea of guilty or nolo contendere, notwithstanding s. 318.14(11).

(12) Two ~~One~~ hundred dollars for a violation of s. 316.520(1) or (2). If, at a hearing, the alleged offender is found to have committed this offense, the court shall impose a minimum civil penalty of $200 ~~$100~~. For a second or subsequent adjudication within a period of 5 years, the department shall suspend the driver's license of the person for not less than 1 year ~~180 days~~ and not more than 2 years ~~1 year~~.

Section 13. Section 318.19, Florida Statutes, is amended to read:

318.19 Infractions requiring a mandatory hearing.--Any person cited for the infractions listed in this section shall not have the provisions of s. 318.14(2), (4), and (9) available to him or her but must appear before the designated official at the time and location of the scheduled hearing:

(1) Any infraction which results in a crash that causes the death of another;

(2) Any infraction which results in a crash that causes "serious bodily injury" of another as defined in s. 316.1933(1);

(3) Any infraction of s. 316.172(1)(b); ~~or~~

(4) Any infraction of s. 316.520(1) or (2); or

(5) Any infraction of s. 316.183(2), s. 316.187, or s. 316.189 of exceeding the speed limit by 30 miles per hour or more.

Section 14. Paragraph (c) of subsection (1) of section 319.14, Florida Statutes, is amended to read:

319.14 Sale of motor vehicles registered or used as taxicabs, police vehicles, lease vehicles, or rebuilt vehicles and nonconforming vehicles.--

(1)

(c) As used in this section:

1. "Police vehicle" means a motor vehicle owned or leased by the state or a county or municipality, marked and outfitted as a pursuit vehicle, and used in law enforcement.

2.a. "Short-term-lease vehicle" means a motor vehicle leased without a driver and under a written agreement to one or more persons from time to time for a period of less than 12 months.

b. "Long-term-lease vehicle" means a motor vehicle leased without a driver and under a written agreement to one person for a period of 12 months or longer.

c. "Lease vehicle" includes both short-term-lease vehicles and long-term-lease vehicles.

3. "Rebuilt vehicle" means a motor vehicle or mobile home built from salvage or junk, as defined in s. 319.30(1).

4. "Assembled from parts" means a motor vehicle or mobile home assembled from parts or combined from parts of motor vehicles or mobile homes, new or used. "Assembled from parts" does not mean a motor vehicle defined as a "rebuilt vehicle" in subparagraph 3., which has been declared a total loss pursuant to s. 319.30.

5. "Kit car" means a motor vehicle assembled with a kit supplied by a manufacturer to rebuild a wrecked or outdated motor vehicle with a new body kit.

6. "Glider kit" means a vehicle assembled with a kit supplied by a manufacturer to rebuild a wrecked or outdated truck or truck tractor.

7. "Replica" means a complete new motor vehicle manufactured to look like an old vehicle.

8. "Flood vehicle" means a motor vehicle or mobile home that has been declared to be a total loss pursuant to s. 319.30(3)(a) resulting from damage caused by water.

9. "Nonconforming vehicle" means a motor vehicle which has been purchased by a manufacturer pursuant to a settlement, determination, or decision under chapter 681.

10. "Settlement" means an agreement entered into between a manufacturer and a consumer that occurs after a dispute is submitted to a program, or an informal dispute settlement procedure established by a manufacturer or is approved for arbitration before the New Motor Vehicle Arbitration Board as defined in s. 681.102.

Section 15. Effective January 1, 2007, subsection (1) of section 320.02, Florida Statutes, is amended to read:

320.02 Registration required; application for registration; forms.--

(1) Except as otherwise provided in this chapter, every owner or person in charge of a motor vehicle which is operated or driven on the roads of this state shall register the vehicle in this state. The owner or person in charge shall apply to the department or to its authorized agent for registration of each such vehicle on a form prescribed by the department. Prior to an original registration of any motorcycle, motor-driven cycle, or

moped, the owner shall present proof that he or she has obtained the necessary endorsement as required in s. 322.57. No registration is required for any motor vehicle which is not operated on the roads of this state during the registration period.

Section 16. Section 320.0706, Florida Statutes, is amended to read:

320.0706 Display of license plates on trucks.--The owner of any commercial truck of gross vehicle weight of 26,001 pounds or more shall display the registration license plate on both the front and rear of the truck in conformance with all the requirements of s. 316.605 that do not conflict with this section. To allow for better visibility, the owner of a dump truck may place the rear license plate on the gate so that the distance from the ground to the top of the license plate is no more than 60 inches. However, the owner of a truck tractor shall be required to display the registration license plate only on the front of such vehicle.

Section 17. Subsection (4) is added to section 320.089, Florida Statutes, to read:

320.089 Members of National Guard and active United States Armed Forces reservists; former prisoners of war; survivors of Pearl Harbor; Purple Heart medal recipients; Operation Iraqi Freedom and Operation Enduring Freedom veterans; special license plates; fee.--

(4) Each owner or lessee of an automobile or truck for private use, truck weighing not more than 7,999 pounds, or recreational vehicle as specified in s. 320.08(9)(c) or (d),

which automobile, truck, or recreational vehicle is not used for hire or commercial use, who is a resident of the state and a current or former member of the United States military who was deployed and served in Iraq during Operation Iraqi Freedom or in Afghanistan during Operation Enduring Freedom shall, upon application to the department, accompanied by proof of active membership or former active duty status during one of these operations, and upon payment of the license tax for the vehicle as provided in s. 320.08, be issued a license plate as provided by s. 320.06 upon which, in lieu of the registration license number prescribed by s. 320.06, shall be stamped the words "Operation Iraqi Freedom" or "Operation Enduring Freedom," as appropriate, followed by the registration license number of the plate.

Section 18. Paragraph (b) of subsection (1), paragraph (a) of subsection (4), and paragraph (b) of subsection (9) of section 320.27, Florida Statutes, are amended to read:

320.27 Motor vehicle dealers.--

(1) DEFINITIONS.--The following words, terms, and phrases when used in this section have the meanings respectively ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(b) "Motor vehicle" means any motor vehicle of the type and kind required to be registered and titled under chapter 319 and this chapter, except a recreational vehicle, moped, motorcycle powered by a motor with a displacement of 50 cubic centimeters or less, low-speed vehicle as defined in s. 320.01, or mobile home.

(4) LICENSE CERTIFICATE.--

(a) A license certificate shall be issued by the department in accordance with such application when the application is regular in form and in compliance with the provisions of this section. The license certificate may be in the form of a document or a computerized card as determined by the department. The actual cost of each original, additional, or replacement computerized card shall be borne by the licensee and is in addition to the fee for licensure. Such license, when so issued, entitles the licensee to carry on and conduct the business of a motor vehicle dealer. Each license issued to a franchise motor vehicle dealer expires annually on December 31 unless revoked or suspended prior to that date. Each license issued to an independent or wholesale dealer or auction expires annually on April 30 unless revoked or suspended prior to that date. Not less than 60 days prior to the license expiration date, the department shall deliver or mail to each licensee the necessary renewal forms. Each independent dealer <u>who has been in business for less than 5 years</u> shall certify that the dealer principal (owner, partner, officer of the corporation, or director) has completed 8 hours of continuing education prior to filing the renewal forms with the department. Such certification shall be filed once every 2 years commencing with the 2006 renewal period. The continuing education shall include at least 2 hours of legal or legislative issues, 1 hour of department issues, and 5 hours of relevant motor vehicle industry topics. Continuing education shall be provided by dealer schools licensed under paragraph (b) either in a classroom setting or by

correspondence. Such schools shall provide certificates of completion to the department and the customer which shall be filed with the license renewal form, and such schools may charge a fee for providing continuing education. Any licensee who does not file his or her application and fees and any other requisite documents, as required by law, with the department at least 30 days prior to the license expiration date shall cease to engage in business as a motor vehicle dealer on the license expiration date. A renewal filed with the department within 45 days after the expiration date shall be accompanied by a delinquent fee of $100. Thereafter, a new application is required, accompanied by the initial license fee. A license certificate duly issued by the department may be modified by endorsement to show a change in the name of the licensee, provided, as shown by affidavit of the licensee, the majority ownership interest of the licensee has not changed or the name of the person appearing as franchisee on the sales and service agreement has not changed. Modification of a license certificate to show any name change as herein provided shall not require initial licensure or reissuance of dealer tags; however, any dealer obtaining a name change shall transact all business in and be properly identified by that name. All documents relative to licensure shall reflect the new name. In the case of a franchise dealer, the name change shall be approved by the manufacturer, distributor, or importer. A licensee applying for a name change endorsement shall pay a fee of $25 which fee shall apply to the change in the name of a main location and all additional locations licensed under the provisions of subsection (5). ~~Each initial license application~~

~~received by the department shall be accompanied by verification that, within the preceding 6 months, the applicant, or one or more of his or her designated employees, has attended a training and information seminar conducted by a licensed motor vehicle dealer training school. Such seminar shall include, but is not limited to, statutory dealer requirements, which requirements include required bookkeeping and recordkeeping procedures, requirements for the collection of sales and use taxes, and such other information that in the opinion of the department will promote good business practices. No seminar may exceed 8 hours in length.~~

(9) DENIAL, SUSPENSION, OR REVOCATION.--

(b) The department may deny, suspend, or revoke any license issued hereunder or under the provisions of s. 320.77 or s. 320.771 upon proof that a licensee has committed, with sufficient frequency so as to establish a pattern of wrongdoing on the part of a licensee, violations of one or more of the following activities:

1. Representation that a demonstrator is a new motor vehicle, or the attempt to sell or the sale of a demonstrator as a new motor vehicle without written notice to the purchaser that the vehicle is a demonstrator. For the purposes of this section, a "demonstrator," a "new motor vehicle," and a "used motor vehicle" shall be defined as under s. 320.60.

2. Unjustifiable refusal to comply with a licensee's responsibility under the terms of the new motor vehicle warranty issued by its respective manufacturer, distributor, or importer. However, if such refusal is at the direction of the

manufacturer, distributor, or importer, such refusal shall not be a ground under this section.

3. Misrepresentation or false, deceptive, or misleading statements with regard to the sale or financing of motor vehicles which any motor vehicle dealer has, or causes to have, advertised, printed, displayed, published, distributed, broadcast, televised, or made in any manner with regard to the sale or financing of motor vehicles.

4. Failure by any motor vehicle dealer to provide a customer or purchaser with an odometer disclosure statement and a copy of any bona fide written, executed sales contract or agreement of purchase connected with the purchase of the motor vehicle purchased by the customer or purchaser.

5. Failure of any motor vehicle dealer to comply with the terms of any bona fide written, executed agreement, pursuant to the sale of a motor vehicle.

6. Failure to apply for transfer of a title as prescribed in s. 319.23(6).

7. Use of the dealer license identification number by any person other than the licensed dealer or his or her designee.

8. Failure to continually meet the requirements of the licensure law.

9. Representation to a customer or any advertisement to the public representing or suggesting that a motor vehicle is a new motor vehicle if such vehicle lawfully cannot be titled in the name of the customer or other member of the public by the seller using a manufacturer's statement of origin as permitted in s. 319.23(1).

10. Requirement by any motor vehicle dealer that a customer or purchaser accept equipment on his or her motor vehicle which was not ordered by the customer or purchaser.

11. Requirement by any motor vehicle dealer that any customer or purchaser finance a motor vehicle with a specific financial institution or company.

12. Requirement by any motor vehicle dealer that the purchaser of a motor vehicle contract with the dealer for physical damage insurance.

13. Perpetration of a fraud upon any person as a result of dealing in motor vehicles, including, without limitation, the misrepresentation to any person by the licensee of the licensee's relationship to any manufacturer, importer, or distributor.

14. Violation of any of the provisions of s. 319.35 by any motor vehicle dealer.

15. Sale by a motor vehicle dealer of a vehicle offered in trade by a customer prior to consummation of the sale, exchange, or transfer of a newly acquired vehicle to the customer, unless the customer provides written authorization for the sale of the trade-in vehicle prior to delivery of the newly acquired vehicle.

16. Willful failure to comply with any administrative rule adopted by the department or the provisions of s. 320.131(8).

17. Violation of chapter 319, this chapter, or ss. 559.901-559.9221, which has to do with dealing in or repairing motor vehicles or mobile homes. Additionally, in the case of used motor vehicles, the willful violation of the federal law

and rule in 15 U.S.C. s. 2304, 16 C.F.R. part 455, pertaining to the consumer sales window form.

18. Failure to maintain evidence of notification to the owner or coowner of a vehicle regarding registration or titling fees owed ~~owned~~ as required in s. 320.02(17) ~~320.02(19)~~.

Section 19. Subsection (5) is added to section 320.405, Florida Statutes, to read:

320.405 International Registration Plan; inspection of records; hearings.--

(5) The department is authorized to enter into agreements for scheduling payments of taxes and penalties due to the department as a result of audit assessments issued under this section.

Section 20. Subsection (16) of section 322.01, Florida Statutes, is amended, subsections (24)-(40) are renumbered as subsections (25)-(41), respectively, subsections (41) and (42) are renumbered as subsections (44) and (45), respectively, and new subsections (24), (42), and (43) are added to that section, to read:

322.01 Definitions.--As used in this chapter:

(16) "Driver's license" means a certificate that ~~which~~, subject to all other requirements of law, authorizes an individual to drive a motor vehicle and that denotes an operator's license as defined in 49 U.S.C. s. 30301.

(24) "Identification card" means a personal identification card issued by the department that conforms to the definition in 18 U.S.C. s. 1028(D).

(42) "Temporary driver's license" means a certificate issued by the department that, subject to all other requirements of law, authorizes an individual to drive a motor vehicle, denotes an operator's license as defined in 49 U.S.C. s. 30301, and denotes that the holder is not a permanent resident of the United States but is permitted to stay in the United States for a short duration of time specified on the license.

(43) "Temporary identification card" means a personal identification card issued by the department that conforms to the definition in 18 U.S.C. s. 1028(D) and denotes that the holder is not a permanent resident of the United States but is permitted to stay in the United States for a short duration of time specified on the card.

Section 21. Subsection (1) of section 322.051, Florida Statutes, is amended to read:

322.051 Identification cards.--

(1) Any person who is 5 ~~12~~ years of age or older, or any person who has a disability, regardless of age, who applies for a disabled parking permit under s. 320.0848, may be issued an identification card by the department upon completion of an application and payment of an application fee.

(a) Each such application shall include the following information regarding the applicant:

1. Full name (first, middle or maiden, and last), gender, social security card number, county of residence and mailing address, country of birth, and a brief description.

2. Proof of birth date satisfactory to the department.

3. Proof of identity satisfactory to the department. Such proof must include one of the following documents issued to the applicant:

a. A driver's license record or identification card record from another jurisdiction that required the applicant to submit a document for identification which is substantially similar to a document required under sub-subparagraph b., sub-subparagraph c., sub-subparagraph d., sub-subparagraph e., sub-subparagraph f., or sub-subparagraph g.;

b. A certified copy of a United States birth certificate;

c. A United States passport;

d. A naturalization certificate issued by the United States Department of Homeland Security;

e. An alien registration receipt card (green card);

f. An employment authorization card issued by the United States Department of Homeland Security; or

g. Proof of nonimmigrant classification provided by the United States Department of Homeland Security, for an original identification card. In order to prove such nonimmigrant classification, applicants may produce but are not limited to the following documents:

(I) A notice of hearing from an immigration court scheduling a hearing on any proceeding.

(II) A notice from the Board of Immigration Appeals acknowledging pendency of an appeal.

(III) Notice of the approval of an application for adjustment of status issued by the United States Bureau of Citizenship and Immigration Services.

(IV) Any official documentation confirming the filing of a petition for asylum status or any other relief issued by the United States Bureau of Citizenship and Immigration Services.

(V) Notice of action transferring any pending matter from another jurisdiction to Florida, issued by the United States Bureau of Citizenship and Immigration Services.

(VI) Order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States including, but not limited to asylum.

(VII) Evidence that an application is pending for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States, provided that a visa number is available with a current priority date for processing by the United States Citizenship and Immigration Services.

Presentation of any of the documents described in sub-subparagraph f. or sub-subparagraph g. entitles the applicant to an identification card for a period not to exceed the expiration date of the document presented or 1 year ~~2 years~~, whichever first occurs.

(b) An application for an identification card must be signed and verified by the applicant in a format designated by the department before a person authorized to administer oaths. The fee for an identification card is $3, including payment for the color photograph or digital image of the applicant.

(c) Each such applicant may include fingerprints and any other unique biometric means of identity.

Section 22. Paragraph (c) of subsection (2) of section 322.08, Florida Statutes, is amended to read:

322.08 Application for license.--

(2) Each such application shall include the following information regarding the applicant:

(c) Proof of identity satisfactory to the department. Such proof must include one of the following documents issued to the applicant:

1. A driver's license record or identification card record from another jurisdiction that required the applicant to submit a document for identification which is substantially similar to a document required under subparagraph 2., subparagraph 3., subparagraph 4., subparagraph 5., subparagraph 6., or subparagraph 7.;

2. A certified copy of a United States birth certificate;

3. A United States passport;

4. A naturalization certificate issued by the United States Department of Homeland Security;

5. An alien registration receipt card (green card);

6. An employment authorization card issued by the United States Department of Homeland Security; or

7. Proof of nonimmigrant classification provided by the United States Department of Homeland Security, for an original driver's license. In order to prove nonimmigrant classification, an applicant may produce the following documents, including, but not limited to:

a. A notice of hearing from an immigration court scheduling a hearing on any proceeding.

b. A notice from the Board of Immigration Appeals acknowledging pendency of an appeal.

c. A notice of the approval of an application for adjustment of status issued by the United States Immigration and Naturalization Service.

d. Any official documentation confirming the filing of a petition for asylum or refugee status or any other relief issued by the United States Immigration and Naturalization Service.

e. A notice of action transferring any pending matter from another jurisdiction to this state issued by the United States Immigration and Naturalization Service.

f. An order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States, including, but not limited to, asylum.

g. Evidence that an application is pending for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States, provided that a visa number is available with a current priority date for processing by the United States Citizenship and Immigration Services.

Presentation of any of the documents in subparagraph 6. or subparagraph 7. entitles the applicant to a driver's license or temporary permit for a period not to exceed the expiration date of the document presented or 1 year ~~2 years~~, whichever occurs first.

Section 23. Effective July 1, 2008, paragraph (a) of subsection (5) of section 322.12, Florida Statutes, is amended to read:

322.12 Examination of applicants.--

(5)(a) The department shall formulate a separate examination for applicants for licenses to operate motorcycles. Any applicant for a driver's license who wishes to operate a motorcycle, and who is otherwise qualified, must successfully complete such an examination, which is in addition to the examination administered under subsection (3). The examination must test the applicant's knowledge of the operation of a motorcycle and of any traffic laws specifically relating thereto and must include an actual demonstration of his or her ability to exercise ordinary and reasonable control in the operation of a motorcycle. Any applicant who fails to pass the initial knowledge examination will incur a $5 fee for each subsequent examination, to be deposited into the Highway Safety Operating Trust Fund. Any applicant who fails to pass the initial skills examination will incur a $10 fee for each subsequent examination, to be deposited into the Highway Safety Operating Trust Fund. In the formulation of the examination, the department shall consider the use of the Motorcycle Operator Skills Test and the Motorcycle in Traffic Test offered by the Motorcycle Safety Foundation. The department shall indicate on the license of any person who successfully completes the examination that the licensee is authorized to operate a motorcycle. If the applicant wishes to be licensed to operate a motorcycle only, he or she need not take the skill or road test

required under subsection (3) for the operation of a motor vehicle, and the department shall indicate such a limitation on his or her license as a restriction. Every first-time applicant for licensure to operate a motorcycle ~~who is under 21 years of age~~ must provide proof of completion of a motorcycle safety course, as provided for in s. 322.0255, before the applicant may be licensed to operate a motorcycle.

Section 24. Subsection (8) of section 322.121, Florida Statutes, is amended to read:

322.121 Periodic reexamination of all drivers.--

(8) In addition to any other examination authorized by this section, an applicant for a renewal of an endorsement issued under s. 322.57(1)(a), (b), (c), (d), ~~or~~ (e), or (f) may be required to complete successfully an examination of his or her knowledge regarding state and federal rules, regulations, and laws, governing the type of vehicle which he or she is seeking an endorsement to operate.

Section 25. Subsection (4) of section 322.142, Florida Statutes, is amended to read:

322.142 Color photographic or digital imaged licenses.--

(4) The department may maintain a film negative or print file. The department shall maintain a record of the digital image and signature of the licensees, together with other data required by the department for identification and retrieval. Reproductions from the file or digital record shall be made and issued only for departmental administrative purposes; for the issuance of duplicate licenses; in response to law enforcement agency requests; to the Department of State and to the

supervisors of elections pursuant to an interagency agreement to facilitate determinations of eligibility of voter registration applicants and registered voters in accordance with ss. 98.045 and 98.075; to the Department of Revenue pursuant to an interagency agreement for use in establishing paternity and establishing, modifying, or enforcing support obligations in Title IV-D cases; or to the Department of Financial Services pursuant to an interagency agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed property claims, and the identification of fraudulent or false claims, and are exempt from the provisions of s. 119.07(1).

Section 26. Subsections (1) through (5), paragraphs (a) and (b) of subsection (6), subsections (7) and (8), paragraph (b) of subsection (10), and subsections (13) and (14) of section 322.2615, Florida Statutes, are amended to read:

322.2615 Suspension of license; right to review.--

(1)(a) A law enforcement officer or correctional officer shall, on behalf of the department, suspend the driving privilege of a person who is driving or in actual physical control of a motor vehicle with an ~~has been arrested by a law enforcement officer for a violation of s. 316.193, relating to~~ unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher~~,~~ or of a person who has refused to submit to a ~~breath,~~ urine~~, or blood~~ test or a test of his or her breath-alcohol or blood-alcohol level ~~authorized by s. 316.1932~~. The officer shall take the person's driver's license and issue the person a 10-day temporary permit if the person is otherwise eligible for the driving privilege and shall issue the person a notice of

suspension. If a blood test has been administered, ~~the results of which are not available to~~ the officer or ~~at the time of the arrest,~~ the agency employing the officer shall transmit the ~~such~~ results to the department within 5 days after receipt of the results. If the department then determines that the person ~~was arrested for a violation of s. 316.193 and that the person~~ had a blood-alcohol level or breath-alcohol level of 0.08 or higher, the department shall suspend the person's driver's license pursuant to subsection (3).

(b) The suspension under paragraph (a) shall be pursuant to, and the notice of suspension shall inform the driver of, the following:

1.a. The driver refused to submit to a lawful breath, blood, or urine test and his or her driving privilege is suspended for a period of 1 year for a first refusal or for a period of 18 months if his or her driving privilege has been previously suspended as a result of a refusal to submit to such a test; or

b. The driver was driving or in actual physical control of a motor vehicle ~~violated s. 316.193 by driving~~ with an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher ~~as provided in that section~~ and his or her driving privilege is suspended for a period of 6 months for a first offense or for a period of 1 year if his or her driving privilege has been previously suspended under this section ~~for a violation of s. 316.193~~.

2. The suspension period shall commence on the date of ~~arrest or~~ issuance of the notice of suspension~~, whichever is~~

~~later~~.

3. The driver may request a formal or informal review of the suspension by the department within 10 days after the date of ~~arrest or~~ issuance of the notice of suspension~~, whichever is later~~.

4. The temporary permit issued at the time of arrest will expire at midnight of the 10th day following the date of ~~arrest or~~ issuance of the notice of suspension~~, whichever is later~~.

5. The driver may submit to the department any materials relevant to the suspension ~~arrest~~.

(2) Except as provided in paragraph (1)(a), the law enforcement officer shall forward to the department, within 5 days after issuing ~~the date of the arrest, a copy of~~ the notice of suspension, the person's driver's license and ~~of the person arrested, and a report of the arrest, including~~ an affidavit stating the officer's grounds for belief that the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances ~~arrested was in violation of s. 316.193~~; the results of any breath or blood test or an affidavit stating that a breath, blood, or urine test was requested by a law enforcement officer or correctional officer and that the person ~~arrested~~ refused to submit; ~~a copy of the citation issued to the person arrested; and~~ the officer's description of the person's field sobriety test, if any; a copy of the crash report, if any; and the notice of suspension. The failure of the officer to submit materials within the 5-day period specified in this subsection and in subsection (1) shall not affect the

department's ability to consider any evidence submitted at or prior to the hearing. The officer may also submit a copy of a videotape of the field sobriety test or the attempt to administer such test. Materials submitted to the department by a law enforcement agency or correctional agency shall be considered self-authenticating and shall be in the record for consideration by the hearing officer. Notwithstanding s. 316.066(4), the crash report shall be considered by the hearing officer.

(3) If the department determines that the license ~~of the person arrested~~ should be suspended pursuant to this section and if the notice of suspension has not already been served upon the person by a law enforcement officer or correctional officer as provided in subsection (1), the department shall issue a notice of suspension and, unless the notice is mailed pursuant to s. 322.251, a temporary permit which expires 10 days after the date of issuance if the driver is otherwise eligible.

(4) If the person whose license is suspended ~~arrested~~ requests an informal review pursuant to subparagraph (1)(b)3., the department shall conduct the informal review by a hearing officer employed by the department. Such informal review hearing shall consist solely of an examination by the department of the materials submitted by a law enforcement officer or correctional officer and by the person whose license is suspended ~~arrested~~, and the presence of an officer or witness is not required.

(5) After completion of the informal review, notice of the department's decision sustaining, amending, or invalidating the suspension of the person's driver's license ~~of the person~~

~~arrested~~ must be provided to such person. Such notice must be mailed to the person at the last known address shown on the department's records, or to the address provided in the law enforcement officer's report if such address differs from the address of record, within 21 days after the expiration of the temporary permit issued pursuant to subsection (1) or subsection (3).

(6)(a) If the person whose license is suspended ~~arrested~~ requests a formal review, the department must schedule a hearing to be held within 30 days after such request is received by the department and must notify the person of the date, time, and place of the hearing.

(b) Such formal review hearing shall be held before a hearing officer employed by the department, and the hearing officer shall be authorized to administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas for the officers and witnesses identified in documents provided in subsection (2), regulate the course and conduct of the hearing, question witnesses, and make a ruling on the suspension. The ~~department and the person arrested may subpoena witnesses, and the~~ party requesting the presence of a witness shall be responsible for the payment of any witness fees and for notifying in writing the state attorney's office in the appropriate circuit of the issuance of the subpoena. If the person who requests a formal review hearing fails to appear and the hearing officer finds such failure to be without just cause, the right to a formal hearing is waived and the suspension shall be sustained.

(7) In a formal review hearing under subsection (6) or an informal review hearing under subsection (4), the hearing officer shall determine by a preponderance of the evidence whether sufficient cause exists to sustain, amend, or invalidate the suspension. The scope of the review shall be limited to the following issues:

(a) If the license was suspended for driving with an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher ~~in violation of s. 316.193~~:

1. Whether the ~~arresting~~ law enforcement officer had probable cause to believe that the person whose license is suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances.

~~2. Whether the person was placed under lawful arrest for a violation of s. 316.193.~~

2.~~3.~~ Whether the person whose license is suspended had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher as provided in s. 316.193.

(b) If the license was suspended for refusal to submit to a breath, blood, or urine test:

1. Whether the ~~arresting~~ law enforcement officer had probable cause to believe that the person whose license is suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances.

~~2. Whether the person was placed under lawful arrest for a violation of s. 316.193.~~

2.~~3.~~ Whether the person whose license is suspended refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.

3.~~4.~~ Whether the person whose license is suspended was told that if he or she refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

(8) Based on the determination of the hearing officer pursuant to subsection (7) for both informal hearings under subsection (4) and formal hearings under subsection (6), the department shall:

(a) Sustain the suspension of the person's driving privilege for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended as a result of a refusal to submit to such tests, if the ~~arrested~~ person refused to submit to a lawful breath, blood, or urine test. The suspension period commences on the date of ~~the arrest or~~ issuance of the notice of suspension~~, whichever is later~~.

(b) Sustain the suspension of the person's driving privilege for a period of 6 months for a blood-alcohol level or breath-alcohol level of 0.08 or higher ~~violation of s. 316.193~~, or for a period of 1 year if the driving privilege of such person has been previously suspended under this section as a result of driving with an unlawful blood-alcohol level or breath-alcohol level ~~a violation of s. 316.193~~. The suspension period commences on the date of ~~the arrest or~~ issuance of the

notice of suspension~~, whichever is later~~.

(10) A person whose driver's license is suspended under subsection (1) or subsection (3) may apply for issuance of a license for business or employment purposes only if the person is otherwise eligible for the driving privilege pursuant to s. 322.271.

(b) If the suspension of the person's driver's license ~~of the person arrested for a violation of s. 316.193,~~ relating to an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher~~,~~ is sustained, the person is not eligible to receive a license for business or employment purposes only pursuant to s. 322.271 until 30 days have elapsed after the expiration of the last temporary permit issued. If the driver is not issued a 10-day permit pursuant to this section or s. 322.64 because he or she is ineligible for the permit and the suspension ~~for a violation of s. 316.193,~~ relating to an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher~~,~~ is not invalidated by the department, the driver is not eligible to receive a business or employment license pursuant to s. 322.271 until 30 days have elapsed from the date of the suspension ~~arrest~~.

(13) A person may appeal any decision of the department sustaining a suspension of his or her driver's license by a petition for writ of certiorari to the circuit court in the county wherein such person resides or wherein a formal or informal review was conducted pursuant to s. 322.31. However, an appeal shall not stay the suspension. A law enforcement agency may appeal any decision of the department invalidating a

suspension by a petition for writ of certiorari to the circuit court in the county where a formal or informal review was conducted. This subsection shall not be construed to provide for a de novo appeal.

(14)(a) The decision of the department under this section or any circuit court review thereof may not be considered in any trial for a violation of s. 316.193, and a written statement submitted by a person in his or her request for departmental review under this section may not be admitted into evidence against him or her in any such trial.

(b) The disposition of any related criminal proceedings does not affect a suspension for refusal to submit to a blood, breath, or urine test~~, authorized by s. 316.1932 or s. 316.1933,~~ imposed under this section.

Section 27. Paragraph (d) of subsection (3) of section 322.27, Florida Statutes, is amended, and paragraph (j) is added to that subsection, to read:

322.27 Authority of department to suspend or revoke license.--

(3) There is established a point system for evaluation of convictions of violations of motor vehicle laws or ordinances, and violations of applicable provisions of s. 403.413(6)(b) when such violations involve the use of motor vehicles, for the determination of the continuing qualification of any person to operate a motor vehicle. The department is authorized to suspend the license of any person upon showing of its records or other good and sufficient evidence that the licensee has been convicted of violation of motor vehicle laws or ordinances, or

applicable provisions of s. 403.413(6)(b), amounting to 12 or more points as determined by the point system. The suspension shall be for a period of not more than 1 year.

(d) The point system shall have as its basic element a graduated scale of points assigning relative values to convictions of the following violations:

1. Reckless driving, willful and wanton--4 points.

2. Leaving the scene of a crash resulting in property damage of more than $50--6 points.

3. Unlawful speed resulting in a crash--6 points.

4. Passing a stopped school bus--4 points.

5. Unlawful speed:

a. Not in excess of 15 miles per hour of lawful or posted speed--3 points.

b. In excess of 15 miles per hour <u>but not in excess of 30 miles per hour</u> of lawful or posted speed--4 points.

<u>c. In excess of 30 miles per hour of lawful or posted speed--6 points.</u>

6.<u>a.</u> A violation of a traffic control signal device as provided in s. 316.074(1) or s. 316.075(1)(c)1.--4 points.

<u>b. A violation of a traffic control signal device as provided in s. 316.074(1) or s. 316.075(1)(c)1. resulting in a crash--6 points.</u>

7. All other moving violations (including parking on a highway outside the limits of a municipality)--3 points. However, no points shall be imposed for a violation of s. 316.0741 or s. 316.2065(12).

8. Any moving violation covered above, excluding unlawful speed, resulting in a crash--4 points.

9. Any conviction under s. 403.413(6)(b)--3 points.

10. Any conviction under s. 316.0775(2)--4 points.

(j) For purposes of sub-subparagraph (d)5.c., the term "conviction" means a finding of guilt, with or without adjudication of guilt, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere, notwithstanding s. 318.14(11).

Section 28. Except as otherwise expressly provided in this act, this act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7167 CS PCB GM 06-01 Growth Management
SPONSOR(S): Growth Management Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Growth Management Committee	10 Y, 0 N	Grayson	Grayson
1) Transportation & Economic Development Appropriations Committee	15 Y, 1 N, w/CS	McAuliffe	Gordon
2) State Infrastructure Council		Grayson	Havlicak
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 7167 is the glitch bill for CS/CS/CS/SB 360 (2005), ch. 2005-290, L.O.F., the Act, relating to infrastructure planning and funding. The bill:

- Conforms terminology to the phrase "proportionate fair-share mitigation."
- Corrects cross-references.
- Merges language into one provision relating to the public schools interlocal agreement.
- Provides that the "under actual-construction" requirement of transportation facility concurrency is met when construction funding needed is provided in the first 3 years of the Department of Transportation's (DOT) work plan.
- Requires DOT to publish and distribute, after public workshops, policy guidelines to assist local governments in planning to assess and mitigate impacts of proposed concurrency management areas.
- Provides a consequence for failure to timely adopt the local government proportionate fair-share mitigation methodology.
- Requires DOT to concur or withhold its concurrence, within 30 days, with the local government's plan for mitigation of impacts to the Strategic Intermodal System (SIS) from proposed transportation exception areas. If DOT fails to respond within 30 days, it is deemed to have concurred with the mitigation.
- Makes technical appropriation corrections to Chapter 2005-290, L.O.F.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

This bill addresses inadvertent errors and other glitches contained in ch. 2005-290, L.O.F., the growth management act of the 2005 Legislative Session.

Background

The 2005 Legislature enacted ch. 2005-290, L.O.F. (the Act), relating to infrastructure planning and funding. The Act was the subject of a conference committee during the last two days of the 2005 Session and was the last bill to pass both houses during the last hour of that Session. As a result, the Act contains a number of matters that may require correction or clarification.

Effect of Proposed Changes

Terminology for Proportionate Share

As outlined in the table below, the Act utilizes seven different terms to refer to the concept of "proportionate fair-share mitigation." The Florida Department of Transportation (DOT) utilized the phrase "proportionate fair-share mitigation" in their development of the model ordinance required in s. 163.3180(16)(a), F.S., as a result of the Act. That phrase appears to best represent the concepts embodied in the Act.

Act Section	Statute Section	Term(s) Used
1	163.3164(32)	"proportionate share"
5	163.3180(13)(e)	"mitigation proportionate to" & "proportionate-share mitigation"
5	163.3180(13)(e)1	"proportionate – share mitigation"
5	163.3180(13)(e)2	"proportionate – share mitigation"
5	163.3180(13)(e)3	"proportionate – share mitigation"
	163.3180(16)	"proportionate fair – share mitigation"
5	163.3180(16)(a)	"proportionate fair – share mitigation"
5	163.3180(16)(b)1	"proportionate fair – share mitigation" & "proportionate fair – share contributions"
5	163.3180(16)(b)2	"proportionate fair-share mitigation"
5	163.3180(16)(c)	"proportionate fair – share mitigation" & "proportionate fair-share contribution"
5	163.3180(16)(f)	"proportionate share agreement" & "proportionate share"
17	380.06(24)(l), (m), & (n)	"proportionate share"

Cross-references

The Act contains a number of cross-references that are inaccurate and should be corrected as outlined below.

- Correction: In s. 163.3177(13)(c)4, F.S., the cross-reference to "subsection (2)" should be "subsection (14)".

  Explanation: The section addresses the topics which a local government must discuss as part of the workshops and public meetings for the development of a community vision. Specifically, this reference is to the designation of an urban service boundary, which is referred to in subsection (14), and not subsection (2).

- Correction: In s. 163.3180(13)(f)1., F.S., the citation to s. 163.31777(6), F.S., should be "163.31777, F.S."

  Explanation: Section 163.3180(13)(f)1., F.S., relates to an exception for municipalities from being a signatory to the public school interlocal agreement. The citation in question was intended to reference other provisions of the statute that established the requirement to enter into the interlocal agreement. The erroneous citation refers to an exemption from the public school interlocal agreement requirements, and should refer to the entire section itself, s. 163.31777, F.S.

- Correction: In s. 163.3180(16)(b)1., F.S., the citation to s. 163.164(32), F.S., should be "s. 163.3164(32), F.S."

  Explanation: Section 163.164(32), F.S., does not exist. The citation was intended to refer to the definition of "financially feasible" which is found at s. 163.3164(32), F.S.

- Correction: In s. 163.3184(17), F.S., the citation to s. 163.31773(13), F.S., should be "s. 163.3177(13) F.S."

  Explanation: Section 163.31773 does not exist. The reference is to a local government that has adopted a community vision and an urban service boundary. Section 163.3177(13) and (14), F.S., relate to community vision and urban service boundaries, respectively.

- Correction: In s. 339.2819(4)(a)2., F.S., the citation to s. 163.3177(9) F.S., should be "s. 163.3180(9), F.S."

  Explanation: Section 339.2819(4)(a)2., F.S., relates to requirements for projects to be funded through the Transportation Regional Incentive Program. The citation in question was intended to relate to the statutory authority for a local government to implement a long-term concurrency management system. The erroneous citation, s. 163.3177(9), F.S., relates to adoption of minimum criteria for review and determination of compliance of local government plan elements. The correct citation, s. 163.3180(9), F.S., relates to long-term transportation and school concurrency management systems.

Funding Issues

The Act contains a number of appropriations and other funding matters that are inadvertent or otherwise need to be corrected, adjusted, or readdressed, as outlined below.

- Transportation Funding

  - Non-recurring Strategic Intermodal System (SIS) Appropriation - The Act appropriates $200 million for the 2005-2006 fiscal year to fund projects on the SIS. The intended funding level was $175 million non-recurring to correspond with a one-time $175 million transfer. The bill makes this correction.

  - State Infrastructural Bank (SIB) non-recurring transfer – The bill deletes s. 339.55(10), F.S. The subsection was inadvertently inserted in the Act last year. There were no funds deposited into

the State Transportation Trust Fund pursuant to s. 201.15(1)(d), F.S., (the DOC Stamp recurring funding) for the SIB.

Public Schools Interlocal Agreement

The bill amends several sections of existing law to merge the requirements for the public schools interlocal agreement into s. 163.31777, F.S. This was undertaken in an effort to provide a single statutory source for these requirements. Specifically, requirements currently existing in ss. 163.3180(13)(g), 1013.33(2) and (3), F.S., are combined and revised into s. 163.31777, F.S.

Concurrency

Transportation Facilities: The bill provides that if the construction funding needed for transportation facilities is provided in the first 3 years of the DOT work program, then the "under-actual-construction" requirement of s. 163.3180(2)(c), F.S., is satisfied.

Impacts to the Strategic Intermodal System

Transportation Concurrency Exception Areas: The bill provides that DOT must publish and distribute, after publicly noticed workshops, policy guidelines containing criteria and options to assist local government in planning to assess and mitigate impacts of a proposed concurrency exception area as described in s. 163.3180(5)(f) and (7), F.S.

Required Adoption of a Proportionate Fair-Share Mitigation Methodology and Transportation Concurrency Management System

The bill provides if a local government fails to adopt a methodology for assessing proportionate fair-share mitigation by December 1, 2006, that local government would be subject to sanctions imposed by the Administration Commission. Section 163.3184(11)(a), F.S., provides that the Administration Commission may specify remedial actions which would bring the comprehensive plan or plan amendment into compliance and may direct state agencies not to provide funds to increase the capacity of roads, bridges, or water and sewer systems within the boundaries of the local government not in compliance. The commission order may also specify that the local government may not be eligible for grants administered under the following programs:

- The Florida Small Cities Community Development Block Grant Program, as authorized by ss. 290.0401-290.049, F.S.
- The Florida Recreation Development Assistance Program, as authorized by chapter 375, F.S.
- Revenue sharing pursuant to ss. 206.60, 210.20, and 218.61 and chapter 212, F.S., to the extent not pledged to pay back bonds.

DOT Comments on Proposed Transportation Concurrency Exception Areas

The Act provides that a local government proposing a transportation concurrency exception area must confer with DOT regarding impacts to, and mitigation of impacts to, SIS facilities. The bill provides that DOT must concur or withhold its concurrence with the mitigation of development impacts to facilities on the SIS within 30 days of the date of submission. If DOT fails to respond within the allotted time period, then DOT is deemed to have concurred.

C. SECTION DIRECTORY:

Section 1 - Amends s. 163.3164(32), F.S., correcting terminology.

Section 2 – Amends s. 163.3177(13)(c), F.S., correcting cross-reference.

Section 3 – Amends s. 163.31777, F.S., relating to public schools interlocal agreements.

Section 4 – Amends s. 163.3180, F.S., relating to concurrency.

Section 5 – Amends s. 163.3184(17), F.S., relating to adoption and amendment of comprehensive plans.

Section 6 – Amends s. 339.2819(4)(a), F.S., relating to the Transportation Regional Incentive Program.

Section 7 – Amends s. 339.55, F.S., relating to the state-funded infrastructure bank; and correcting an appropriations error.

Section 8 – Amends s. 380.06(24)(l), (m) and (n), F.S., relating to developments of regional impact; correcting terminology.

Section 9 – Amends s. 1013.33(2), (3), and (12), F.S., relating to the coordination of school planning with local governments.

Section 10 – Amends s. 1013.65(2)(a), F.S., relating to the Public Education Capital Outlay and Debt Service Trust Fund; removing an appropriation for the Classrooms for Kids Program.

Section 11 – Amends s. 27 of ch. 2005-290, L.O.F., relating to appropriations.

Section 12 - Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have an impact on state revenues.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate. Counties that fail to adopt a methodology for assessing proportionate fair-share mitigation by December 1, 2006, would be subject to sanctions imposed by the Administration Commission.

2. Expenditures:

   Indeterminate. While the bill strengthens certain timing requirements for local government planning related activities, the requirement to undertake those activities exists in current law.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The bill both strengthens the timing requirements for certain local government actions and appropriates funding which provides the potential for some local government benefits. Both of these features may result in either advancing or delaying local development activities depending upon specific local circumstances.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

The bill does not appear to raise any constitutional issues.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 21, 2006, the Growth Management Committee adopted one amendment. The amendment removed the deletion of s. 163.31777(3)(b) and (c), F.S. from the bill.

At the April 17, 2006 meeting, the Transportation & Economic Development Appropriations Committee approved HB 7167 with four amendments. The first amendment was a technical amendment. The second amendment removed the requirement from the bill that public schools interlocal agreements for school concurrency service areas must establish a process and schedule for the mandatory incorporation of school concurrency service areas, and the criteria and standards for the establishment of those service areas into the local comprehensive plan. The third amendment removed the appropriations from the bill, and the fourth amendment provided if a local government fails to adopt a methodology for assessing proportionate fair-share mitigation by December 1, 2006, that local government would be subject to sanctions imposed by the Administration Commission.

CHAMBER ACTION

The Transportation & Economic Development Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to growth management; amending s. 163.3164, F.S.; revising a definition; amending s. 163.3177, F.S.; correcting a cross-reference; amending s. 163.31777, F.S.; revising requirements and procedures for public schools interlocal agreements; amending s. 163.3180, F.S.; revising concurrency requirements and procedures; providing sanctions; amending ss. 163.3184 and 339.2819, F.S.; correcting cross-references; amending s. 339.55, F.S.; deleting an annual appropriation from the State Transportation Trust Fund for State Infrastructure Bank purposes; amending s. 380.06, F.S.; revising certain statutory exemption provisions for developments of regional impact; amending s. 1013.33, F.S.; revising requirements and procedures for coordination of planning with local governing bodies; amending s. 1013.65, F.S.; revising provisions relating to sources of appropriations to the Public Education Capital Outlay and Debt Service

Trust Fund to delete an annual appropriation to the Classroom for Kids Program; amending s. 27, ch. 2005-290, Laws of Florida; revising an appropriation from the State Transportation Trust Fund for Florida Strategic Intermodal System purposes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (32) of section 163.3164, Florida Statutes, is amended to read:

163.3164 Local Government Comprehensive Planning and Land Development Regulation Act; definitions.--As used in this act:

(32) "Financial feasibility" means that sufficient revenues are currently available or will be available from committed funding sources for the first 3 years, or will be available from committed or planned funding sources for years 4 and 5, of a 5-year capital improvement schedule for financing capital improvements, such as ad valorem taxes, bonds, state and federal funds, tax revenues, impact fees, and developer contributions, which are adequate to fund the projected costs of the capital improvements identified in the comprehensive plan necessary to ensure that adopted level-of-service standards are achieved and maintained within the period covered by the 5-year schedule of capital improvements. The requirement that level-of-service standards be achieved and maintained shall not apply if the <u>proportionate fair-share mitigation</u> ~~proportionate-share~~ process set forth in s. 163.3180(12) and (16) is used.

Section 2. Paragraph (c) of subsection (13) of section 163.3177, Florida Statutes, is amended to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.--

(13) Local governments are encouraged to develop a community vision that provides for sustainable growth, recognizes its fiscal constraints, and protects its natural resources. At the request of a local government, the applicable regional planning council shall provide assistance in the development of a community vision.

(c) As part of the workshops and public meetings, the local government must discuss strategies for addressing the topics discussed under paragraph (b), including:

1. Strategies to preserve open space and environmentally sensitive lands, and to encourage a healthy agricultural economy, including innovative planning and development strategies, such as the transfer of development rights;

2. Incentives for mixed-use development, including increased height and intensity standards for buildings that provide residential use in combination with office or commercial space;

3. Incentives for workforce housing;

4. Designation of an urban service boundary pursuant to subsection (14) ~~(2)~~; and

5. Strategies to provide mobility within the community and to protect the Strategic Intermodal System, including the development of a transportation corridor management plan under s. 337.273.

Section 3. Subsections (1) and (2), paragraph (a) of subsection (3), and subsection (4) of section 163.31777, Florida Statutes, are amended to read:

163.31777 Public schools interlocal agreement.--

(1)(a) The district school board, county, and nonexempt municipalities located within the geographic area of a school district shall enter into an interlocal agreement ~~with the district school board~~ which jointly establishes the specific ways in which the plans and processes of the district school board and the local governments are to be coordinated. ~~The interlocal agreements shall be submitted to the state land planning agency and the Office of Educational Facilities and the SMART Schools Clearinghouse in accordance with a schedule published by the state land planning agency.~~

~~(b) The schedule must establish staggered due dates for submission of interlocal agreements that are executed by both the local government and the district school board, commencing on March 1, 2003, and concluding by December 1, 2004, and must set the same date for all governmental entities within a school district. However, if the county where the school district is located contains more than 20 municipalities, the state land planning agency may establish staggered due dates for the submission of interlocal agreements by these municipalities. The schedule must begin with those areas where both the number of districtwide capital outlay full-time equivalent students equals 80 percent or more of the current year's school capacity and the projected 5-year student growth is 1,000 or greater, or where~~

~~the projected 5-year student growth rate is 10 percent or greater.~~

(b) ~~(c)~~ If the student population has declined over the 5-year period preceding the due date for submittal of an interlocal agreement by the local government and the district school board, the local government and the district school board may petition the state land planning agency for a waiver of one or more requirements of subsection (2). The waiver must be granted if the procedures called for in subsection (2) are unnecessary because of the school district's declining school age population, considering the district's 5-year facilities work program prepared pursuant to s. 1013.35. The state land planning agency may modify or revoke the waiver upon a finding that the conditions upon which the waiver was granted no longer exist. The district school board and local governments must submit an interlocal agreement within 1 year after notification by the state land planning agency that the conditions for a waiver no longer exist.

(c) ~~(d)~~ ~~Interlocal agreements between local governments and district school boards adopted pursuant to s. 163.3177 before the effective date of this section must be updated and executed pursuant to the requirements of this section, if necessary. Amendments to interlocal agreements adopted pursuant to this section must be submitted to the state land planning agency within 30 days after execution by the parties for review consistent with this section.~~ Local governments and the district school board in each school district are encouraged to adopt a single updated interlocal agreement to which all join as

parties. The state land planning agency shall assemble and make available model interlocal agreements meeting the requirements of this section and notify local governments and, jointly with the Department of Education, the district school boards of the requirements of this section, the dates for compliance, and the sanctions for noncompliance. The state land planning agency shall be available to informally review proposed interlocal agreements. If the state land planning agency has not received a proposed interlocal agreement for informal review, the state land planning agency shall, at least 60 days before the deadline for submission of the executed agreement, renotify the local government and the district school board of the upcoming deadline and the potential for sanctions.

(2) The interlocal agreement must acknowledge the school board's constitutional and statutory obligations to provide a uniform system of free public schools on a countywide basis and the land use authority of local governments, including the authority to approve or deny comprehensive plan amendments and development orders. ~~At a minimum,~~ The interlocal agreement must ~~address interlocal agreement requirements in s. 163.3180(13)(g), except for exempt local governments as provided in s. 163.3177(12), and must~~ address the following issues:

(a) Mechanisms for coordinating the development, adoption, and amendment of each local government's public school facilities element with each other local government that is a party to the agreements and the plans of the school board to ensure a uniform districtwide school concurrency system.

(b) A process for developing siting criteria that encourages the location of public schools proximate to urban residential areas to the extent possible and seeks to collocate schools with other public facilities, including, but not limited to, parks, libraries, and community centers, to the extent possible.

(c) Uniform, districtwide, level-of-service standards for public schools of the same type and a process for modifying adopted level-of-service standards.

(d) A process for establishing a financially feasible public school capital facilities program and a process and schedule for incorporation of the public school capital facilities program into the local government comprehensive plans on an annual basis.

(e) If school concurrency is to be applied on a less than districtwide basis in the form of concurrency service areas, criteria and standards for the establishment and modification of school concurrency service areas. The agreement must ensure maximum use of school capacity, taking into account transportation costs and court-approved desegregation plans and other applicable factors.

(f) A uniform districtwide procedure for implementing school concurrency that provides for:

1. Evaluation of development applications for compliance with school concurrency requirements, including, but not limited to, information provided by the school board on affected schools.

2. Monitoring and evaluation of the school concurrency system.

(g) A process and uniform methodology for determining proportionate fair-share mitigation pursuant to s. 380.06.

(h) ~~(a)~~ A process by which each local government and the district school board agree and base their plans on consistent projections of the amount, type, and distribution of population growth and student enrollment. The geographic distribution of jurisdiction-wide growth forecasts is a major objective of the process.

(i) ~~(b)~~ A process to coordinate and share information relating to existing and planned public school facilities, including school renovations and closures, and local government plans for development and redevelopment.

(j) ~~(c)~~ Participation by affected local governments with the district school board in the process of evaluating potential school closures, significant renovations to existing schools, and new school site selection before land acquisition. Local governments shall advise the district school board as to the consistency of the proposed closure, renovation, or new site with the local comprehensive plan, including appropriate circumstances and criteria under which a district school board may request an amendment to the comprehensive plan for school siting.

(k) ~~(d)~~ A process for determining the need for and timing of onsite and offsite improvements to support new, proposed expansion, or redevelopment of existing schools. The process

must address identification of the party or parties responsible for the improvements.

~~(e) A process for the school board to inform the local government regarding the effect of comprehensive plan amendments on school capacity. The capacity reporting must be consistent with laws and rules relating to measurement of school facility capacity and must also identify how the district school board will meet the public school demand based on the facilities work program adopted pursuant to s. 1013.35.~~

(l) ~~(f)~~ Participation of the local governments in the preparation of the annual update to the district school board's 5-year district facilities work program and educational plant survey prepared pursuant to s. 1013.35.

(m) ~~(g)~~ A process for determining where and how joint use of either school board or local government facilities can be shared for mutual benefit and efficiency.

(n) ~~(h)~~ A procedure for the resolution of disputes between the district school board and local governments, which may include the dispute resolution processes contained in chapters 164 and 186.

(o) ~~(i)~~ An oversight process, including an opportunity for public participation, for the implementation of the interlocal agreement.

(p) A process for development of a public school facilities element pursuant to s. 163.3177(12).

(q) Provisions for siting and modification or enhancements to existing school facilities so as to encourage urban infill and redevelopment.

(r) A process for the use and conversion of historic school facilities that are no longer suitable for educational purposes, as determined by the district school board.

(s) A process for informing the local government regarding the effect of comprehensive plan amendments and rezonings on school capacity. The capacity reporting must be consistent with laws and rules relating to measurement of school facility capacity and must also identify how the district school board will meet the public school demand based on the facilities work program adopted pursuant to s. 1013.35.

(t) A process to ensure an opportunity for the school board to review and comment on the effect of comprehensive plan amendments and rezonings on the public school facilities plan.

For those local governments that receive a waiver pursuant to subsection (1), the interlocal agreement shall not include the issues provided for in paragraphs (a), (c), (d), (e), (f), (g), and (p). For counties or municipalities that do not have a public school interlocal agreement or public school facility element, the assessment shall determine whether the local government continues to meet the criteria of s. 163.3177(12). If a county or municipality determines that it no longer meets the criteria, the county or municipality must adopt appropriate school concurrency goals, objectives, and policies in its plan amendments pursuant to the requirements of the public school facility element and enter into the existing interlocal agreement required by this section and s. 173.3177(6)(h)2. in order to fully participate in the school concurrency system.

(3)(a) The updated interlocal agreement adopted pursuant to the schedule adopted in accordance with s. 163.3177(12)(i) and any subsequent amendments must be submitted to the state land planning agency and the Office of Educational Facilities within 30 days after execution by the parties to the agreement for review consistent with this section. The office ~~and SMART Schools Clearinghouse~~ shall submit any comments or concerns regarding the executed interlocal agreement or agreement amendments to the state land planning agency within 30 days after receipt of the executed interlocal agreement or agreement amendments. The state land planning agency shall review the updated executed interlocal agreement or agreement amendments to determine whether they are ~~it is~~ consistent with the requirements of subsection (2), the adopted local government comprehensive plan, and other requirements of law. Within 60 days after receipt of an updated executed interlocal agreement or agreement amendments, the state land planning agency shall publish a notice on the agency's Internet website that states ~~of intent in the Florida Administrative Weekly and shall post a copy of the notice on the agency's Internet site. The notice of intent must state~~ whether the interlocal agreement is consistent or inconsistent with the requirements of subsection (2) and this subsection, as appropriate.

(4) If an updated executed interlocal agreement is not timely submitted to the state land planning agency for review, the state land planning agency shall, within 15 working days after the deadline for submittal, issue to the local government and the district school board a Notice to Show Cause why

sanctions should not be imposed for failure to submit an executed interlocal agreement by the deadline established by the agency. The agency shall forward the notice and the responses to the Administration Commission, which may enter a final order citing the failure to comply and imposing sanctions against the local government and district school board by directing the appropriate agencies to withhold at least 5 percent of state funds pursuant to s. 163.3184(11) and by directing the Department of Education to withhold from the district school board at least 5 percent of funds for school construction available pursuant to ss. 1013.65, 1013.68, 1013.70, and 1013.72.

Section 4. Paragraph (c) of subsection (2), paragraph (f) of subsection (5), subsection (7), paragraphs (e), (f), (g), and (h) of subsection (13), and paragraphs (a), (b), (c), (e), and (f) of subsection (16) of section 163.3180, Florida Statutes, are amended to read:

163.3180 Concurrency.--

(2)

(c) Consistent with the public welfare, and except as otherwise provided in this section, transportation facilities needed to serve new development shall be in place or under actual construction within 3 years after the local government approves a building permit or its functional equivalent that results in traffic generation. For purposes of this paragraph and all provisions relating to transportation concurrency, if the construction funding needed for facilities is provided in the first 3 years of the Department of Transportation's work

program or the local government's schedule of capital improvements, the under-actual-construction requirements of this paragraph shall be deemed to have been met.

(5)

(f) Prior to the designation of a concurrency exception area, the Department of Transportation shall be consulted by the local government to assess the impact that the proposed exception area is expected to have on the adopted level-of-service standards established for Strategic Intermodal System facilities, as defined in s. 339.64, and roadway facilities funded in accordance with s. 339.2819. Further, the local government shall, in cooperation with the Department of Transportation, develop a plan to mitigate ~~any~~ impacts to the Strategic Intermodal System, including, if appropriate, the development of a long-term concurrency management system pursuant to subsection (9) and s. 163.3177(3)(d). The exceptions may be available only within the specific geographic area of the jurisdiction designated in the plan. Pursuant to s. 163.3184, any affected person may challenge a plan amendment establishing these guidelines and the areas within which an exception could be granted. By October 1, 2006, the Department of Transportation, after publicly noticed workshops, shall publish and distribute to local governments a policy guideline containing criteria and options to assist local governments in planning to assess and mitigate the impacts of a proposed concurrency exception area as described in this paragraph.

(7) In order to promote infill development and redevelopment, one or more transportation concurrency management

areas may be designated in a local government comprehensive plan. A transportation concurrency management area must be a compact geographic area with an existing network of roads where multiple, viable alternative travel paths or modes are available for common trips. A local government may establish an areawide level-of-service standard for such a transportation concurrency management area based upon an analysis that provides for a justification for the areawide level of service, how urban infill development or redevelopment will be promoted, and how mobility will be accomplished within the transportation concurrency management area. Prior to the designation of a concurrency management area, the Department of Transportation shall be consulted by the local government to assess the impact that the proposed concurrency management area is expected to have on the adopted level-of-service standards established for Strategic Intermodal System facilities, as defined in s. 339.64, and roadway facilities funded in accordance with s. 339.2819. Further, the local government shall, in cooperation with the Department of Transportation, develop a plan to mitigate any impacts to the Strategic Intermodal System, including, if appropriate, the development of a long-term concurrency management system pursuant to subsection (9) and s. 163.3177(3)(d). Transportation concurrency management areas existing prior to July 1, 2005, shall meet, at a minimum, the provisions of this section by July 1, 2006, or at the time of the comprehensive plan update pursuant to the evaluation and appraisal report, whichever occurs last. The state land planning agency shall amend chapter 9J-5, Florida Administrative Code, to

be consistent with this subsection. By October 1, 2006, the Department of Transportation, after publicly noticed workshops, shall publish and distribute to local governments a policy guideline containing criteria and options to assist local governments in planning to assess and mitigate the impacts of a proposed concurrency management area as described in this paragraph.

(13) School concurrency shall be established on a districtwide basis and shall include all public schools in the district and all portions of the district, whether located in a municipality or an unincorporated area unless exempt from the public school facilities element pursuant to s. 163.3177(12). The application of school concurrency to development shall be based upon the adopted comprehensive plan, as amended. All local governments within a county, except as provided in paragraph (f), shall adopt and transmit to the state land planning agency the necessary plan amendments, along with the interlocal agreement, for a compliance review pursuant to s. 163.3184(7) and (8). The minimum requirements for school concurrency are the following:

(e) Availability standard.--Consistent with the public welfare, a local government may not deny an application for site plan, final subdivision approval, or the functional equivalent for a development or phase of a development authorizing residential development for failure to achieve and maintain the level-of-service standard for public school capacity in a local school concurrency management system where adequate school facilities will be in place or under actual construction within

3 years after the issuance of final subdivision or site plan approval, or the functional equivalent. School concurrency shall be satisfied if the developer executes a legally binding commitment to provide proportionate fair-share mitigation against ~~proportionate to~~ the demand for public school facilities to be created by actual development of the property, including, but not limited to, the options described in subparagraph 1. Options for proportionate fair-share ~~proportionate-share~~ mitigation of impacts on public school facilities shall be established in the public school facilities element and the interlocal agreement pursuant to s. 163.31777.

1. Appropriate proportionate fair-share mitigation options include the contribution of land; the construction, expansion, or payment for land acquisition or construction of a public school facility; or the creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity credits. Such options must include execution by the applicant and the local government of a binding development agreement that constitutes a legally binding commitment to pay proportionate fair-share ~~proportionate-share~~ mitigation for the additional residential units approved by the local government in a development order and actually developed on the property, taking into account residential density allowed on the property prior to the plan amendment that increased overall residential density. The district school board shall be a party to such an agreement. As a condition of its entry into such a development agreement, the local government may require

the landowner to agree to continuing renewal of the agreement upon its expiration.

2. If the education facilities plan and the public educational facilities element authorize a contribution of land; the construction, expansion, or payment for land acquisition; or the construction or expansion of a public school facility, or a portion thereof, as proportionate fair-share ~~proportionate-share~~ mitigation, the local government shall credit such a contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by local ordinance for the same need, on a dollar-for-dollar basis at fair market value.

3. Any proportionate fair-share ~~proportionate-share~~ mitigation must be directed by the school board toward a school capacity improvement identified in a financially feasible 5-year district work plan and which satisfies the demands created by that development in accordance with a binding developer's agreement.

4. This paragraph does not limit the authority of a local government to deny a development permit or its functional equivalent pursuant to its home rule regulatory powers, except as provided in this part.

(f) Intergovernmental coordination.--

1. When establishing concurrency requirements for public schools, a local government shall satisfy the requirements for intergovernmental coordination set forth in s. 163.3177(6)(h)1. and 2., except that a municipality is not required to be a signatory to the interlocal agreement required by ss. 163.3177(6)(h)2. and 163.31777~~(6)~~, as a prerequisite for

imposition of school concurrency, and as a nonsignatory, shall not participate in the adopted local school concurrency system, if the municipality meets all of the following criteria for having no significant impact on school attendance:

a. The municipality has issued development orders for fewer than 50 residential dwelling units during the preceding 5 years, or the municipality has generated fewer than 25 additional public school students during the preceding 5 years.

b. The municipality has not annexed new land during the preceding 5 years in land use categories which permit residential uses that will affect school attendance rates.

c. The municipality has no public schools located within its boundaries.

d. At least 80 percent of the developable land within the boundaries of the municipality has been built upon.

2. A municipality which qualifies as having no significant impact on school attendance pursuant to the criteria of subparagraph 1. must review and determine at the time of its evaluation and appraisal report pursuant to s. 163.3191 whether it continues to meet the criteria pursuant to s. 163.31777(6). If the municipality determines that it no longer meets the criteria, it must adopt appropriate school concurrency goals, objectives, and policies in its plan amendments based on the evaluation and appraisal report, and enter into the existing interlocal agreement required by ss. 163.3177(6)(h)2. and 163.31777, in order to fully participate in the school concurrency system. If such a municipality fails to do so, it will be subject to the enforcement provisions of s. 163.3191.

~~(g) Interlocal agreement for school concurrency.--When establishing concurrency requirements for public schools, a local government must enter into an interlocal agreement that satisfies the requirements in ss. 163.3177(6)(h)1. and 2. and 163.31777 and the requirements of this subsection. The interlocal agreement shall acknowledge both the school board's constitutional and statutory obligations to provide a uniform system of free public schools on a countywide basis, and the land use authority of local governments, including their authority to approve or deny comprehensive plan amendments and development orders. The interlocal agreement shall be submitted to the state land planning agency by the local government as a part of the compliance review, along with the other necessary amendments to the comprehensive plan required by this part. In addition to the requirements of ss. 163.3177(6)(h) and 163.31777, the interlocal agreement shall meet the following requirements:~~

~~1. Establish the mechanisms for coordinating the development, adoption, and amendment of each local government's public school facilities element with each other and the plans of the school board to ensure a uniform districtwide school concurrency system.~~

~~2. Establish a process for the development of siting criteria which encourages the location of public schools proximate to urban residential areas to the extent possible and seeks to collocate schools with other public facilities such as parks, libraries, and community centers to the extent possible.~~

~~3. Specify uniform, districtwide level-of-service standards for public schools of the same type and the process for modifying the adopted level-of-service standards.~~

~~4. Establish a process for the preparation, amendment, and joint approval by each local government and the school board of a public school capital facilities program which is financially feasible, and a process and schedule for incorporation of the public school capital facilities program into the local government comprehensive plans on an annual basis.~~

~~5. Define the geographic application of school concurrency. If school concurrency is to be applied on a less than districtwide basis in the form of concurrency service areas, the agreement shall establish criteria and standards for the establishment and modification of school concurrency service areas. The agreement shall also establish a process and schedule for the mandatory incorporation of the school concurrency service areas and the criteria and standards for establishment of the service areas into the local government comprehensive plans. The agreement shall ensure maximum utilization of school capacity, taking into account transportation costs and court-approved desegregation plans, as well as other factors. The agreement shall also ensure the achievement and maintenance of the adopted level-of-service standards for the geographic area of application throughout the 5 years covered by the public school capital facilities plan and thereafter by adding a new fifth year during the annual update.~~

~~6. Establish a uniform districtwide procedure for implementing school concurrency which provides for:~~

~~a. The evaluation of development applications for compliance with school concurrency requirements, including information provided by the school board on affected schools, impact on levels of service, and programmed improvements for affected schools and any options to provide sufficient capacity;~~

~~b. An opportunity for the school board to review and comment on the effect of comprehensive plan amendments and rezonings on the public school facilities plan; and~~

~~c. The monitoring and evaluation of the school concurrency system.~~

~~7. Include provisions relating to amendment of the agreement.~~

~~8. A process and uniform methodology for determining proportionate-share mitigation pursuant to subparagraph (e)1.~~

(g) ~~(h)~~ Local government authority.--This subsection does not limit the authority of a local government to grant or deny a development permit or its functional equivalent prior to the implementation of school concurrency.

(16) It is the intent of the Legislature to provide a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors. The methodology used to calculate proportionate fair-share mitigation under this section shall be as provided for in subsection (12).

(a) By December 1, 2006, each local government shall adopt by ordinance a methodology for assessing proportionate fair-share mitigation options. A local government that fails to adopt a methodology for assessing proportionate fair-share mitigation

options by December 1, 2006, shall be subject to the sanctions described in s. 163.3184(11)(a) imposed by the Administration Commission. By December 1, 2005, the Department of Transportation shall develop a model transportation concurrency management ordinance with methodologies for assessing proportionate fair-share mitigation options.

(b)1. In its transportation concurrency management system, a local government shall, by December 1, 2006, include methodologies that will be applied to calculate proportionate fair-share mitigation. A local government that fails to include such methodologies by December 1, 2006, shall be subject to the sanctions described in s. 163.3184(11)(a) imposed by the Administration Commission. A developer may choose to satisfy all transportation concurrency requirements by contributing or paying proportionate fair-share mitigation if transportation facilities or facility segments identified as mitigation for traffic impacts are specifically identified for funding in the 5-year schedule of capital improvements in the capital improvements element of the local plan or the long-term concurrency management system or if such contributions or payments to such facilities or segments are reflected in the 5-year schedule of capital improvements in the next regularly scheduled update of the capital improvements element. Updates to the 5-year capital improvements element which reflect proportionate fair-share contributions may not be found not in compliance based on ss. 163.3164(32) ~~163.164(32)~~ and 163.3177(3) if additional contributions, payments or funding sources are

reasonably anticipated during a period not to exceed 10 years to fully mitigate impacts on the transportation facilities.

2. Proportionate fair-share mitigation shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the local government's impact fee ordinance.

(c) Proportionate fair-share mitigation includes, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities and may include public funds as determined by the local government. The fair market value of the proportionate fair-share mitigation shall not differ based on the form of mitigation. A local government may not require a development to pay more than its proportionate fair-share mitigation ~~contribution~~ regardless of the method of mitigation.

(e) Mitigation for development impacts to facilities on the Strategic Intermodal System made pursuant to this subsection requires the concurrence of the Department of Transportation. The department has 30 days from the date of submission by the applicable local government to concur or withhold concurrence with the mitigation of development impacts to facilities on the Strategic Intermodal System. If the department does not respond within the 30-day period, the department is deemed to have concurred with the mitigation.

(f) If ~~In the event the~~ funds in an adopted 5-year capital improvements element are insufficient to fully fund construction of a transportation improvement required by the local

government's concurrency management system, a local government and a developer may still enter into a binding proportionate fair-share mitigation ~~proportionate-share~~ agreement authorizing the developer to construct that amount of development on which the proportionate fair-share mitigation ~~proportionate-share~~ is calculated if the proportionate fair-share mitigation ~~proportionate-share~~ amount in such agreement is sufficient to pay for one or more improvements which will, in the opinion of the governmental entity or entities maintaining the transportation facilities, significantly benefit the impacted transportation system. The improvement or improvements funded by the proportionate fair-share mitigation ~~proportionate-share~~ component must be adopted into the 5-year capital improvements schedule of the comprehensive plan at the next annual capital improvements element update.

Section 5. Subsection (17) of section 163.3184, Florida Statutes, is amended to read:

163.3184 Process for adoption of comprehensive plan or plan amendment.--

(17) A local government that has adopted a community vision and urban service boundary under s. 163.3177(13) ~~163.31773(13)~~ and (14) may adopt a plan amendment related to map amendments solely to property within an urban service boundary in the manner described in subsections (1), (2), (7), (14), (15), and (16) and s. 163.3187(1)(c)1.d. and e., 2., and 3., such that state and regional agency review is eliminated. The department may not issue an objections, recommendations, and comments report on proposed plan amendments or a notice of

intent on adopted plan amendments; however, affected persons, as defined by paragraph (1)(a), may file a petition for administrative review pursuant to the requirements of s. 163.3187(3)(a) to challenge the compliance of an adopted plan amendment. This subsection does not apply to any amendment within an area of critical state concern, to any amendment that increases residential densities allowable in high-hazard coastal areas as defined in s. 163.3178(2)(h), or to a text change to the goals, policies, or objectives of the local government's comprehensive plan. Amendments submitted under this subsection are exempt from the limitation on the frequency of plan amendments in s. 163.3187.

Section 6. Paragraph (a) of subsection (4) of section 339.2819, Florida Statutes, is amended to read:

339.2819 Transportation Regional Incentive Program.--

(4)(a) Projects to be funded with Transportation Regional Incentive Program funds shall, at a minimum:

1. Support those transportation facilities that serve national, statewide, or regional functions and function as an integrated regional transportation system.

2. Be identified in the capital improvements element of a comprehensive plan that has been determined to be in compliance with part II of chapter 163, after July 1, 2005, or to implement a long-term concurrency management system adopted by a local government in accordance with s. 163.3180(9) ~~163.3177(9)~~. Further, the project shall be in compliance with local government comprehensive plan policies relative to corridor management.

3. Be consistent with the Strategic Intermodal System Plan developed under s. 339.64.

4. Have a commitment for local, regional, or private financial matching funds as a percentage of the overall project cost.

Section 7. Subsection (10) of section 339.55, Florida Statutes, is amended to read:

339.55 State-funded infrastructure bank.--

~~(10) Funds paid into the State Transportation Trust Fund pursuant to s. 201.15(1)(d) for the purposes of the State Infrastructure Bank are hereby annually appropriated for expenditure to support that program.~~

Section 8. Paragraphs (l), (m), and (n) of subsection (24) of section 380.06, Florida Statutes, are amended to read:

380.06 Developments of regional impact.--

(24) STATUTORY EXEMPTIONS.--

(l) Any proposed development within an urban service boundary established under s. 163.3177(14) is exempt from the provisions of this section if the local government having jurisdiction over the area where the development is proposed has adopted the urban service boundary and has entered into a binding agreement with adjacent jurisdictions and the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities, and has adopted a proportionate fair-share mitigation ~~share~~ methodology pursuant to s. 163.3180(16).

(m) Any proposed development within a rural land stewardship area created under s. 163.3177(11)(d) is exempt from

the provisions of this section if the local government that has adopted the rural land stewardship area has entered into a binding agreement with jurisdictions that would be impacted and the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities, and has adopted a proportionate fair-share mitigation ~~share~~ methodology pursuant to s. 163.3180(16).

(n) Any proposed development or redevelopment within an area designated as an urban infill and redevelopment area under s. 163.2517 is exempt from the provisions of this section if the local government has entered into a binding agreement with jurisdictions that would be impacted and the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities, and has adopted a proportionate fair-share mitigation ~~share~~ methodology pursuant to s. 163.3180(16).

Section 9. Subsections (2), (3), and (12) of section 1013.33, Florida Statutes, are amended to read:

1013.33 Coordination of planning with local governing bodies.--

(2)(a) The school board, county, and nonexempt municipalities located within the geographic area of a school district shall enter into an interlocal agreement that jointly establishes the specific ways in which the plans and processes of the district school board and the local governments are to be coordinated. Any updated ~~The~~ interlocal agreements and agreement amendments shall be submitted to the state land planning agency and the Office of Educational Facilities ~~and the SMART Schools~~

~~Clearinghouse~~ in accordance with a schedule published by the state land planning agency pursuant to s. 163.3177(12)(i).

~~(b) The schedule must establish staggered due dates for submission of interlocal agreements that are executed by both the local government and district school board, commencing on March 1, 2003, and concluding by December 1, 2004, and must set the same date for all governmental entities within a school district. However, if the county where the school district is located contains more than 20 municipalities, the state land planning agency may establish staggered due dates for the submission of interlocal agreements by these municipalities. The schedule must begin with those areas where both the number of districtwide capital outlay full-time-equivalent students equals 80 percent or more of the current year's school capacity and the projected 5-year student growth rate is 1,000 or greater, or where the projected 5-year student growth rate is 10 percent or greater.~~

(b) ~~(c)~~ If the student population has declined over the 5-year period preceding the due date for submittal of an interlocal agreement by the local government and the district school board, the local government and district school board may petition the state land planning agency for a waiver of one or more of the requirements of subsection (3). The waiver must be granted if the procedures called for in subsection (3) are unnecessary because of the school district's declining school age population, considering the district's 5-year work program prepared pursuant to s. 1013.35. The state land planning agency may modify or revoke the waiver upon a finding that the

conditions upon which the waiver was granted no longer exist. The district school board and local governments must submit an interlocal agreement within 1 year after notification by the state land planning agency that the conditions for a waiver no longer exist.

(c) ~~(d) Interlocal agreements between local governments and district school boards adopted pursuant to s. 163.3177 before the effective date of subsections (2)-(9) must be updated and executed pursuant to the requirements of subsections (2)-(9), if necessary. Amendments to interlocal agreements adopted pursuant to subsections (2)-(9) must be submitted to the state land planning agency within 30 days after execution by the parties for review consistent with subsections (3) and (4).~~ Local governments and the district school board in each school district are encouraged to adopt a single updated interlocal agreement in which all join as parties. The state land planning agency shall assemble and make available model interlocal agreements meeting the requirements of subsections (2)-(9) and shall notify local governments and, jointly with the Department of Education, the district school boards of the requirements of subsections (2)-(9), the dates for compliance, and the sanctions for noncompliance. The state land planning agency shall be available to informally review proposed interlocal agreements. If the state land planning agency has not received a proposed interlocal agreement for informal review, the state land planning agency shall, at least 60 days before the deadline for submission of the executed agreement, renotify the local

government and the district school board of the upcoming deadline and the potential for sanctions.

(3) ~~At a minimum,~~ The interlocal agreement must address ~~interlocal agreement requirements in s. 163.3180(13)(g), except for exempt local governments as provided in s. 163.3177(12), and must address~~ the ~~following~~ issues specified in s. 163.31777(2).~~:~~

~~(a) A process by which each local government and the district school board agree and base their plans on consistent projections of the amount, type, and distribution of population growth and student enrollment. The geographic distribution of jurisdiction-wide growth forecasts is a major objective of the process.~~

~~(b) A process to coordinate and share information relating to existing and planned public school facilities, including school renovations and closures, and local government plans for development and redevelopment.~~

~~(c) Participation by affected local governments with the district school board in the process of evaluating potential school closures, significant renovations to existing schools, and new school site selection before land acquisition. Local governments shall advise the district school board as to the consistency of the proposed closure, renovation, or new site with the local comprehensive plan, including appropriate circumstances and criteria under which a district school board may request an amendment to the comprehensive plan for school siting.~~

~~(d) A process for determining the need for and timing of onsite and offsite improvements to support new construction,~~

~~proposed expansion, or redevelopment of existing schools. The process shall address identification of the party or parties responsible for the improvements.~~

~~(e) A process for the school board to inform the local government regarding the effect of comprehensive plan amendments on school capacity. The capacity reporting must be consistent with laws and rules regarding measurement of school facility capacity and must also identify how the district school board will meet the public school demand based on the facilities work program adopted pursuant to s. 1013.35.~~

~~(f) Participation of the local governments in the preparation of the annual update to the school board's 5-year district facilities work program and educational plant survey prepared pursuant to s. 1013.35.~~

~~(g) A process for determining where and how joint use of either school board or local government facilities can be shared for mutual benefit and efficiency.~~

~~(h) A procedure for the resolution of disputes between the district school board and local governments, which may include the dispute resolution processes contained in chapters 164 and 186.~~

~~(i) An oversight process, including an opportunity for public participation, for the implementation of the interlocal agreement.~~

(12) As early in the design phase as feasible and consistent with an interlocal agreement entered pursuant to subsections (2)-(8), but no later than 120 ~~90~~ days before commencing construction, the district school board shall in

writing request a determination of consistency with the local government's comprehensive plan. The local governing body that regulates the use of land shall determine, in writing within 45 days after receiving the necessary information and a school board's request for a determination, whether a proposed educational facility is consistent with the local comprehensive plan and consistent with local land development regulations. If the determination is affirmative, school construction may commence and further local government approvals are not required, except as provided in this section. Failure of the local governing body to make a determination in writing within 90 days after a district school board's request for a determination of consistency shall be considered an approval of the district school board's application. Campus master plans and development agreements must comply with the provisions of ss. 1013.30 and 1013.63.

Section 10. Paragraph (a) of subsection (2) of section 1013.65, Florida Statutes, is amended to read:

1013.65 Educational and ancillary plant construction funds; Public Education Capital Outlay and Debt Service Trust Fund; allocation of funds.--

(2)(a) The Public Education Capital Outlay and Debt Service Trust Fund shall be comprised of the following sources, which are hereby appropriated to the trust fund:

1. Proceeds, premiums, and accrued interest from the sale of public education bonds and that portion of the revenues accruing from the gross receipts tax as provided by s. 9(a)(2),

Art. XII of the State Constitution, as amended, interest on investments, and federal interest subsidies.

2. General revenue funds appropriated to the fund for educational capital outlay purposes.

3. All capital outlay funds previously appropriated and certified forward pursuant to s. 216.301.

4.~~a.~~ Funds paid pursuant to s. 201.15(1)(d).

~~b. The sum of $41.75 million of such funds shall be appropriated annually for expenditure to fund the Classrooms for Kids Program created in s. 1013.735 and shall be distributed as provided by that section.~~

Section 11. Paragraph (a) of subsection (2) of section 27 of chapter 2005-290, Laws of Florida, is amended to read:

Section 27.

(2) The following appropriations are made for the 2005-2006 fiscal year only on a nonrecurring basis:

(a) From the State Transportation Trust Fund in the Department of Transportation:

1. <u>One hundred seventy-five</u> ~~Two hundred~~ million dollars for the purposes specified in sections 339.61, 339.62, 339.63, and 339.64, Florida Statutes.

2. Two hundred seventy-five million dollars for the purposes specified in section 339.2819, Florida Statutes.

3. One hundred million dollars for the purposes specified in section 339.55, Florida Statutes.

4. Twenty-five million for the purposes specified in section 339.2817, Florida Statutes.

Section 12. This act shall take effect July 1, 2006.